

C. The business plan submitted by an insurer may include documentation or information setting forth why writing new business in a particular region may not be in the best interest of the insurer's policyholders. Factors to be considered in determining whether writing new business is not in the best interest of the insurer's policyholders may include but not be limited to the following:

1. the insurer's total market share based on the insurer's total written premium in the particular region or area;
2. the insurer's total market share based on the insurer's total written premium in the state;
3. the insurer's probable maximum loss (PML) based on the amount of risk the insurer has written in the state;
4. the insurer's total homeowners insurance policies in force in the particular region or area;
5. the insurer's total homeowners insurance policies in force in the state;
6. whether the rate filing and deductible are needed to ensure the insurer's ability to meet its ongoing obligations to its policyholders;
7. whether the rate filing and deductible are needed to ensure the insurer has adequate loss reserves;
8. whether the rate filing and deductible are needed to ensure the insurer's ability to remain competitive in the market;
9. whether the rate filing and deductible are needed to ensure the insurer's ability to adequately manage its business and the risk it has assumed; and
10. any other factors that the Commissioner determines are applicable, relevant, and appropriate.

D. Any business plan, documentation or information filed pursuant to subsections A, B, or C of this Section shall be considered proprietary or trade secret pursuant to the provisions of R.S. 44:3.2 and the Uniform Trade Secrets Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 to enforce the provisions of R.S. 22:1333(D) and 22:1265(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:675 (April 2009).

§13511. Rescission

A. The Commissioner may subsequently rescind his approval of any filing made pursuant to this Subsection if the insurer fails to write new business in accordance with the business plan filed with and approved by the Commissioner pursuant to R.S. 22:1333(D) and 22:1265(F).

B. If a filing made pursuant to R.S. 22:1333(D) and 22:1265(F) has been approved and in effect for at least 180 days, any rescission by the Commissioner shall set forth the date when such rescission shall be effective.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 to enforce the provisions of R.S. 22:1333(D) and 22:1265(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:676 (April 2009).

§13513. Notification to Insured of Premium Savings

A. Any insurer receiving approval to deviate from the requirements of R.S. 22:1333(C) and 22:1265(D) concerning deductibles for named storms and hurricanes as a result of a filing made pursuant to Regulation 93 and R.S. 22:1333(D) and 22:1265(F) shall itemize and notify the insured of the premium savings associated with the new deductible by indicating the dollar amount of the premium savings on the renewal notice or as a separate insert with the renewal notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 to enforce the provisions of R.S. 22:1333(D) and 22:1265(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:676 (April 2009).

§13515. Multiple Deductibles

A. Any homeowners policy of insurance that contains any provision that would apply more than one deductible to a loss resulting from any single incident covered by the policy shall be null and void and unenforceable as contrary to public policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 to enforce the provisions of R.S. 22:1333(D) and 22:1265(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:676 (April 2009).

§13517. Severability

A. If any Section or provision of Regulation 93 or the application to any person or circumstance is held invalid, such invalidity or determination shall not affect other Sections or provisions or the application of Regulation 93 to any persons or circumstances that can be given effect without the invalid Section or provision or application, and for these purposes the Sections and provisions of Regulation 93 and the application to any persons or circumstances are severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 to enforce the provisions of R.S. 22:1333(D) and 22:1265(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:676 (April 2009).

§13519. Effective Date

A. Regulation 93 shall become effective upon final publication in the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 to enforce the provisions of R.S. 22:1333(D) and 22:1265(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:677 (April 2009).

Chapter 137. Regulation 98—Annual Financial Reporting

§13701. Authority

A. Regulation 98 is promulgated by the Commissioner of Insurance (commissioner) of the Louisiana Department of Insurance (department) pursuant to authority granted under

the Louisiana Insurance Code Title 22, R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq. more particularly R.S. 22:675.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2454 (November 2009).

§13703. Purpose and Scope

A. The purpose of Regulation 98 is to improve the surveillance of the financial condition of insurers by the department by requiring:

1. an annual audit of financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants;
2. the communication of internal control related matters noted in an audit; and
3. a management's report of internal control over financial reporting.

B. Every insurer as defined by §13705 shall be subject to Regulation 98. Insurers having direct premiums written in this state of less than \$1,000,000 in any calendar year and fewer than 1,000 policyholders or certificate holders of direct written policies nationwide at the end of the calendar year shall be exempt from Regulation 98 for that calendar year unless the commissioner makes a specific finding that compliance is necessary for the commissioner to carry out statutory responsibilities. Insurers having assumed premiums pursuant to contracts and/or treaties of reinsurance of \$1,000,000 or more will not be exempt.

C. Foreign or alien insurers filing the audited financial report in another state, pursuant to that state's requirement for the filing of audited financial reports, which has been found by the commissioner to be substantially similar to the requirements herein, are exempt from §13707-§13725 of Regulation 98 if:

1. a copy of the audited financial report, communication of internal control related matters noted in an audit, and the accountant's letter of qualifications that are filed with the other state are filed with the commissioner in accordance with the filing dates specified in §13707, §13721 and §13723 of Regulation 98 respectively. Canadian insurers may submit accountants' reports as filed with the Office of the Superintendent of Financial Institutions, Canada;
2. a copy of any notification of adverse financial condition report filed with another state is filed with the commissioner within the time specified in §13719 of Regulation 98.

D. Foreign or alien insurers required to file management's report of internal control over financial reporting in another state are exempt from filing the report in the state of Louisiana provided the other state has

substantially similar reporting requirements and the report is filed with the commissioner of the other state within the time specified.

E. Regulation 98 shall not prohibit, preclude or in any way limit the commissioner of insurance from ordering or conducting or performing examinations of insurers under the rules and regulations of the Department of Insurance, and the practices and procedures of the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2454 (November 2009).

§13705. Definitions

A. The terms and definitions contained herein are intended to provide definitional guidance as the terms are used within Regulation 98.

Accountant or Independent Certified Public Accountant—an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants (AICPA) and in all states in which he or she is licensed to practice; for Canadian and British companies, the term(s) means a Canadian-chartered or British-chartered accountant.

Affiliate Of, or Person Affiliated with a Specific Person—a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

Audit Committee—a committee or equivalent body established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or Group of insurers and audits of financial statements of the insurer or Group of insurers. The Audit Committee of any entity that controls a Group of insurers may be deemed to be the Audit Committee for one or more of these controlled insurers solely for the purposes of Regulation 98 at the election of the controlling person. Refer to §13727.A.5 for exercising this election. If an Audit Committee is not designated by the insurer, the insurer's entire board of directors shall constitute the Audit Committee.

Audited Financial Report—includes those items specified in §13709 of Regulation 98.

Commissioner—Commissioner of Insurance of the state of Louisiana unless otherwise indicated.

Department—Louisiana Department of Insurance unless otherwise indicated.

Group of Insurers—those licensed insurers included in the reporting requirements Insurance Holding Company System Regulatory Act, R.S. 22:691 et seq., or a set of insurers as identified by management for the purpose of assessing the effectiveness of internal control over financial reporting.

Indemnification—an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.

Independent Board Member—as defined or described in §13727.A.3.

Insurer—a licensed insurer as defined in R.S. 22:46(10) or an authorized insurer as defined in R.S. 22:46(3).

Internal Control over Financial Reporting—a process effected by an entity's board of directors, management and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements, i.e., those items specified in §13709.B.2 through §13709.B.7 of Regulation 98 and includes those policies and procedures that:

a. pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;

b. provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements, i.e., those items specified in §13709.B.2 through §13709.B.7 of Regulation 98 and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and

c. provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements, i.e., those items specified in §13709.B.2 through §13709.B.7 of Regulation 98.

NAIC—National Association of Insurance Commissioners.

SEC—the United States Securities and Exchange Commission.

Section 404—Section 404 of the Sarbanes-Oxley Act of 2002 and the SEC's rules and regulations promulgated thereunder.

Section 404 Report—management's report on "internal control over financial reporting" as defined by the SEC and the related attestation report of the independent certified public accountant as described or defined in §13705 of Regulation 98.

SOX Compliant Entity—an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002:

a. the preapproval requirements of Section 201 (Section 10A(i) of the Securities Exchange Act of 1934);

b. the audit committee independence requirements of Section 301 (Section 10A(m)(3) of the Securities Exchange Act of 1934); and

c. the internal control over financial reporting requirements of Section 404 (Item 308 of SEC Regulation S-K).

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2454 (November 2009).

§13707. General Requirements Related to Filing and Extensions for Filing of Annual Audited Financial Reports and Audit Committee Appointments

A. All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the commissioner on or before June 1 for the year ended December 31 immediately preceding. The commissioner may require an insurer to file an Audited financial report earlier than June 1 upon giving 90 days advance notice to the insurer.

B. Extensions of the June 1 filing date may be granted by the commissioner for 30 day periods upon a showing by the insurer and its independent certified public accountant of the reasons for requesting an extension and determination by the commissioner of good cause for an extension. The request for extension must be submitted in writing not less than 10 days prior to the due date and must contain sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.

C. If an extension is granted in accordance with the provisions in Subsection B of this Section, a similar extension of 30 days is granted to the filing of management's report of internal control over financial reporting.

D. Every insurer required to file an annual audited financial report pursuant to Regulation 98 shall designate a group of individuals as constituting its audit committee, as defined in §13705 of Regulation 98. The audit committee of an entity that controls an insurer may be deemed to be the insurer's audit committee for purposes of Regulation 98 at the election of the controlling person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2455 (November 2009).

§13709. Contents of Annual Audited Financial Report

A. The annual audited financial report shall report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the department of insurance of the state of domicile.

B. The annual audited financial report shall include the following:

1. report of independent certified public accountant;
2. balance sheet reporting admitted assets, liabilities, capital and surplus;
3. statement of operations;
4. statement of cash flow;
5. statement of changes in capital and surplus;
6. notes to financial statements.

These notes shall be those required by the appropriate National Association of Insurance Commissioners (NAIC) *Annual Statement Instructions* and the NAIC *Accounting Practices and Procedures Manual*. The notes shall include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to R.S. 22:571 and 22:252 with a written description of the nature of these differences.

C. The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner, and the financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2455 (November 2009).

§13711. Designation of Independent Certified Public Accountant

A. Each insurer required by Regulation 98 to file an annual audited financial report must within 60 days after becoming subject to the requirement, register with the commissioner in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit set forth in Regulation 98. Insurers not retaining an independent certified public accountant on the effective date of Regulation 98 shall register the name and address of their retained independent certified public accountant not less than six months before the date when the first audited financial report is to be filed.

B. The insurer shall obtain a letter from the accountant and file a copy with the commissioner stating that the accountant is aware of the provisions of the insurance code and the regulations of the insurance department of the state of domicile that relate to accounting and financial matters and affirming that the accountant will express his or her opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed

or otherwise permitted by that insurance department, specifying such exceptions as he or she may believe appropriate.

C. If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall within five business days notify the commissioner of this event. The insurer shall also furnish the commissioner with a separate letter within 10 business days of the above notification stating whether in the 24 months preceding such event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure as well as which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him or her to make reference to the subject matter of the disagreement in connection with his or her opinion. The disagreements required to be reported in response to this Section include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction.

D. Disagreements contemplated by this Section are those that occur at the decision-making level, i.e., between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also request in writing that the former accountant furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for which he or she does not agree; and the insurer shall furnish the responsive letter from the former accountant to the commissioner together with its own.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2456 (November 2009).

§13713. Qualifications of Independent Certified Public Accountant

A. The commissioner shall not recognize a person or firm as a qualified independent certified public accountant if the person or firm:

1. is not in good standing with the AICPA and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant; or
2. has either directly or indirectly entered into an agreement of indemnity or release from liability, collectively referred to as *indemnification*, with respect to the audit of the insurer.

B. Except as otherwise provided in Regulation 98, the commissioner shall recognize an independent certified public accountant as qualified as long as he or she conforms

to the standards of his or her profession, as contained in the Code of Professional Ethics of the AICPA and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the State Board of Certified Public Accountants of Louisiana and the Society of Louisiana Certified Public Accountants, or similar code.

C. A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under R.S. 22:2001 et seq., the mediation or arbitration provisions shall operate at the option of the statutory successor.

D.1. The lead or coordinating audit partner having primary responsibility for the audit may not act in that capacity for more than five consecutive years. The person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of five consecutive years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. This application should be made at least 30 days before the end of the calendar year. The commissioner may consider the following factors in determining if the relief should be granted:

- a. number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;
- b. premium volume of the insurer; or
- c. number of jurisdictions in which the insurer transacts business.

2. The insurer shall file, with its annual statement filing, the approval for relief from §13713.D.1 with the states that it is licensed in or doing business in and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

E. The commissioner shall neither recognize as a qualified independent certified public accountant, nor accept an annual audited financial report, prepared in whole or in part by, a natural person who:

1. has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961 to 1968, or any dishonest conduct or practices under federal or state law;
2. has been found to have violated the insurance laws of this state with respect to any previous reports submitted under Regulation 98; or
3. has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of Regulation 98.

F. The commissioner of insurance, as provided in accordance with the requirements of the Administrative Procedure Act, R.S. 49:950 et seq., may hold a hearing, if

requested by the insurer, to determine whether an independent certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing his or her opinion on the financial statements in the annual audited financial report made pursuant to Regulation 98 and require the insurer to replace the accountant with another accountant whose relationship with the insurer is qualified within the meaning of Regulation 98.

G.1. The commissioner shall not recognize as a qualified independent certified public accountant, nor accept an annual audited financial report, prepared in whole or in part by an accountant who provides to an insurer, contemporaneously with the audit, the following non-audit services:

- a. bookkeeping or other services related to the accounting records or financial statements of the insurer;
- b. financial information systems and design and implementation;
- c. appraisal or valuation services, fairness opinions, or contribution-in-kind reports;
- d. actuarially-oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an insurer in understanding the methods, assumptions and input used in the determination of amounts recorded in the financial statement only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements. An accountant's actuary may also issue an actuarial opinion or certification (opinion) on an insurer's reserves if the following conditions have been met:
 - i. neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions;
 - ii. the insurer has competent personnel or engages a third party actuary to estimate the reserves for which management takes responsibility; and
 - iii. the accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves;
- e. internal audit outsourcing services;
- f. management functions or human resources;
- g. broker or dealer, investment adviser, or investment banking services;
- h. legal services or expert services unrelated to the audit; or
- i. any other services that the commissioner determines, by regulation, are impermissible.

2. In general, the principles of independence with respect to services provided by the qualified independent certified public accountant are largely predicated on three basic principles, violations of which would impair the

accountant's independence. The principles are that the accountant cannot function in the role of management, cannot audit his or her own work, and cannot serve in an advocacy role for the insurer.

H. Insurers having direct written and assumed premiums of less than \$100,000,000 in any calendar year may request an exemption from §13713.G.1. The insurer shall file with the commissioner a written statement discussing the reasons why the insurer should be exempt from these provisions. If the commissioner finds, upon review of this statement, that compliance with Regulation 98 would constitute a financial or organizational hardship upon the insurer, an exemption may be granted.

I. A qualified independent certified public accountant who performs the audit may engage in other non-audit services, including tax services, that are not described in §13713.G.1 or that do not conflict with §13713.G.2, only if the activity is approved in advance by the audit committee in accordance with §13713.J.

J. All auditing services and non-audit services provided to an insurer by the qualified independent certified public accountant of the insurer shall be preapproved by the audit committee. The preapproval requirement is waived with respect to non-audit services if the insurer is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX Compliant Entity or:

1. the aggregate amount of all such non-audit services provided to the insurer constitutes not more than 5 percent of the total amount of fees paid by the insurer to its qualified independent certified public accountant during the fiscal year in which the non-audit services are provided;

2. the services were not recognized by the insurer at the time of the engagement to be non-audit services; and

3. the services are promptly brought to the attention of the audit committee and approved prior to the completion of the audit by the audit committee or by one or more members of the audit committee who are the members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

K. The audit committee may delegate to one or more designated members of the audit committee the authority to grant the preapprovals required by §13713.J. The decisions of any member to whom this authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.

L.1. The commissioner shall not recognize an independent certified public accountant as qualified for a particular insurer if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for that insurer, was employed by the independent certified public accountant and participated in the audit of that insurer during the one-year period preceding the date that the most current statutory opinion is due. Paragraph L.1 shall only apply to partners and senior managers involved in the audit. An insurer may make application to the commissioner for

relief from the above requirement on the basis of unusual circumstances.

2. The insurer shall file, with its annual statement filing, the approval for relief from §13713.L.1 with the states that it is licensed in or doing business in and with the NAIC. If the non-domestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

AUTHORITY NOTE: Promulgated in accordance with the R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2456 (November 2009).

§13715. Consolidated or Combined Audits

A. An insurer may make written application to the commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies that utilizes a pooling or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidating or combining worksheet shall be filed with the report, as follows:

1. amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet;

2. amounts for each insurer subject to this Section shall be stated separately;

3. noninsurance operations may be shown on the worksheet on a combined or individual basis;

4. explanations of consolidating and eliminating entries shall be included; and

5. a reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2458 (November 2009).

§13717. Scope of Audit and Report of Independent Certified Public Accountant

A. Financial statements furnished pursuant to §13709 shall be examined by the independent certified public accountant. The audit of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. In accordance with AU Section 319 of the Professional Standards of the AICPA, *Consideration of Internal Control in a Financial Statement Audit*, the independent certified public accountant should obtain an understanding of internal control sufficient to plan the audit.

To the extent required by AU 319, for those insurers required to file a Management's Report of Internal Control over Financial Reporting pursuant to §13731, the independent certified public accountant should consider (as that term is defined in Statement on Auditing Standards (SAS) No. 102, *Defining Professional Requirements in Statements on Auditing Standards* or its replacement) the most recently available report in planning and performing the audit of the statutory financial statements. Consideration shall be given to the procedures illustrated in the *Financial Condition Examiners Handbook* promulgated by the National Association of Insurance Commissioners as the independent certified public accountant deems necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2458 (November 2009).

§13719. Notification of Adverse Financial Condition

A. The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report, in writing, within five business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under audit or that the insurer does not meet the minimum capital and surplus requirement of the Louisiana Insurance Code as of that date. An insurer that has received a report pursuant to this paragraph shall forward a copy of the report to the commissioner within five business days of receipt of the report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the commissioner. If the independent certified public accountant fails to receive the evidence within the required five business day period, the independent certified public accountant shall furnish the commissioner a copy of its report within the next five business days.

B. No independent certified public accountant shall be liable in any manner to any person for any statement made in connection with the above paragraph if the statement is made in good faith in compliance with §13719.A.

C. If the accountant, subsequent to the date of the audited financial report filed pursuant to Regulation 98, becomes aware of facts that might have affected his or her report, the commissioner reiterates herein the obligation of the accountant to take such action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the AICPA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2458 (November 2009).

§13721. Communication of Internal Control Related Matters Noted in an Audit

A. In addition to the annual audited financial report, each insurer shall furnish the commissioner with a written communication as to any unremediated material weaknesses in its internal control over financial reporting noted during the audit. Such communication shall be prepared by the accountant within 60 days after the filing of the annual audited financial report and shall contain a description of any unremediated material weakness as the term material weakness is defined by Statement on Auditing Standard 112, *Communication of Internal Control Related Matters Identified in an Audit*, or its replacement, including subsequent statements on auditing standards that may be issued requiring communications of internal control related matters identified in an audit to the audit committee or others charged with governance as of December 31 immediately preceding so as to coincide with the audited financial report discussed in §13707.A in the insurer's internal control over financial reporting noted by the accountant during the course of their audit of the financial statements. If no unremediated material weaknesses were noted, the communication should so state.

B. The insurer is required to provide a description of remedial actions taken or proposed to correct unremediated material weaknesses, if the actions are not described in the accountant's communication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2458 (November 2009).

§13723. Accountant's Letter of Qualifications

A. The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:

1. that the accountant is independent with respect to the insurer and conforms to the standards of his or her profession as contained in the Code of Professional Ethics and pronouncements of the AICPA and the Rules of Professional Conduct of the State Board of Certified Public Accountants of Louisiana and the Society of Louisiana Certified Public Accountants, or similar code;

2. the background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing within Regulation 98 shall be construed as prohibiting the accountant from utilizing such staff as he or she deems appropriate where use is consistent with the standards prescribed by generally accepted auditing standards;

3. that the accountant understands the annual audited financial report and his opinion thereon will be filed in compliance with Regulation 98 and that the commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers;

4. that the accountant consents to the requirements of §13725 of Regulation 98 and that the accountant consents and agrees to make available for review by the commissioner, or the commissioner's designee or appointed agent, the workpapers, as defined in §13725;

5. a representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the AICPA; and

6. a representation that the accountant is in compliance with the requirements of §13713 of Regulation 98.

AUTHORITY NOTE: Promulgated in accordance with the R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2459 (November 2009).

§13725. Definition, Availability and Maintenance of Independent Certified Public Accountants Workpapers

A. Workpapers are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the accountant's audit of the financial statements of an insurer. Accordingly, workpapers may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of his or her audit of the financial statements of an insurer and which support the accountant's opinion.

B. Every insurer required to file an audited financial report pursuant to Regulation 98, shall require the accountant to make available for review by department of insurance examiners, all workpapers prepared in the conduct of the accountant's audit and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the department of insurance or at any other reasonable place designated by the commissioner. The insurer shall require that the accountant retain the audit workpapers and communications until the department of insurance has filed a report on examination covering the period of the audit but no longer than seven years from the date of the audit report.

C. In the conduct of the aforementioned periodic review by department of insurance examiners, it shall be agreed that photocopies or electronic copies of pertinent audit workpapers may be made and retained by the department. Such reviews by the department examiners shall be considered investigations and all working papers and communications obtained during the course of such investigations shall be afforded the same confidentiality as other examination workpapers generated by the department.

AUTHORITY NOTE: Promulgated in accordance with the R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2459 (November 2009).

§13727. Requirements for Audit Committees

A. This Section shall not apply to foreign or alien insurers licensed in this state or an insurer that is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX Compliant Entity.

1. The audit committee shall be directly responsible for the appointment, compensation and oversight of the work of any accountant including resolution of disagreements between management and the accountant regarding financial reporting for the purpose of preparing or issuing the audited financial report or related work pursuant to Regulation 98. Each accountant shall report directly to the audit committee.

2. Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to §13727.A.5 and as defined by §13705.

3. In order to be considered independent for purposes of this Section, a member of the audit committee may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary thereof. However, if law requires board participation by otherwise non-independent members, that law shall prevail and such members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.

4. If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the department, may remain an audit committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity or one year from the occurrence of the event that caused the member to no longer be independent.

5. To exercise the election of the controlling person to designate the audit committee for purposes of Regulation 98, the ultimate controlling person shall provide written notice to the commissioners of the affected insurers. Notification shall be made timely prior to the issuance of the statutory audit report and include a description of the basis for the election. The election can be changed through notice to the commissioner by the insurer, which shall include a description of the basis for the change. The election shall remain in effect for perpetuity, until rescinded.

6. The audit committee shall require the accountant that performs any audit for an insurer required by Regulation 98 to timely report to the audit committee in accordance

with the requirements of SAS 114, *Communication with Audit Committees*, or its replacement as well as subsequent statements on auditing standards that may be issued requiring communications to audit committees or others charged with governance including:

- a. all significant accounting policies and material permitted practices;
 - b. all material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and
 - c. other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.
7. If an insurer is a member of an insurance holding company system, the reports required by §13727.A.6 may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.
8. The proportion of independent audit committee members shall meet or exceed the following criteria.

Prior Calendar Year Direct Written and Assumed Premiums		
\$0 - \$300,000,000	Over \$300,000,000 - \$500,000,000	Over \$500,000,000
No minimum requirements. See also Note A and B.	Majority (50% or more) of members shall be independent. See also Note A and B.	Supermajority of members (75% or more) shall be independent. See also Note A.

Note A: The commissioner has authority afforded by state law to require the entity's board to enact improvements to the independence of the audit committee membership if the insurer is in a Risk Based Capital (RBC) action level event, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer.

Note B: All insurers with less than \$500,000,000 in prior year direct written and assumed premiums are encouraged to structure their audit committees with at least a supermajority of independent audit committee members.

Note C: Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from non-affiliates for the reporting entities.

9. An insurer with direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and the Federal Flood Program, of less than \$500,000,000 may make application to the commissioner for a waiver from the §13727 requirements based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from §13727 with the states that it is licensed in or doing business in and with the

NAIC. If the non-domestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

AUTHORITY NOTE: Promulgated in accordance with the R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2459 (November 2009).

§13729. Conduct of Insurer in Connection with the Preparation of Required Reports and Documents

A. No director or officer of an insurer shall, directly or indirectly:

- 1. make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review or communication required under Regulation 98; or
- 2. omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review or communication required under Regulation 98.

B. No officer or director of an insurer, or any other person acting under the direction thereof, shall directly or indirectly take any action to coerce, manipulate, mislead or fraudulently influence any accountant engaged in the performance of an audit pursuant to Regulation 98 if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading.

C. For purposes of Subsection B of this Section, actions that, "if successful, could result in rendering the insurer's financial statements materially misleading" include but are not limited to actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead or fraudulently influence an accountant:

- 1. to issue or reissue a report on an insurer's financial statements that is not warranted in the circumstances due to material violations of statutory accounting principles prescribed by the commissioner, generally accepted auditing standards, or other professional or regulatory standards;
- 2. to not perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;
- 3. to not withdraw an issued report; or
- 4. to not communicate matters to an insurer's audit committee.

D. If the commissioner believes that the company or any other person has not materially complied with Regulation 98 or any request, order and/or directive promulgated hereunder, after notice and opportunity to be heard, the

commissioner may impose sanctions, including cease and desist orders, the levy of a civil fine as authorized by law, the suspension or revocation of Insurer' Certificate of Authority and the referral by the commissioner of this matter to the proper law enforcement and prosecutorial agencies pursuant to R.S. 22:11 et seq.

AUTHORITY NOTE: Promulgated in accordance with the R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2460 (November 2009).

§13731. Management's Report of Internal Control over Financial Reporting

A. Every insurer required to file an audited financial report pursuant to Regulation 98 that has annual direct written and assumed premiums of \$500,000,000 or more, excluding premiums reinsured with the Federal Crop Insurance Corporation and the Federal Flood Program, shall prepare a report of the insurer's or group of insurers' internal control over financial reporting, as these terms are defined in §13705. The report shall be filed with the commissioner along with the communication of internal control related matters noted in an audit described under §13721 management's report of internal control over financial reporting shall be as of December 31 immediately preceding.

B. Notwithstanding the premium threshold in Subsection A of this Section, the commissioner may require an insurer to file management's report of internal control over financial reporting if the insurer is in any RBC level event, or is deemed to be in hazardous financial condition.

C. An insurer or a group of insurers that are directly subject to Section 404; part of a holding company system whose parent is directly subject to Section 404; not directly subject to Section 404 but is a SOX Compliant Entity; or a member of a holding company system whose parent is not directly subject to Section 404 but is a SOX Compliant Entity may file its or its parent's Section 404 report and an addendum in satisfaction of this §13731 requirement provided that those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements those items included in Section §13709.B.2 through §13709.B.7 of Regulation 98 were included in the scope of the Section 404 Report.

D. The addendum shall be a positive statement by management that there are no material processes with respect to the preparation of the insurer's or group of insurers' audited statutory financial statements those items included in §13709.B.2 through §13709.B.7 of Regulation 98 excluded from the Section 404 Report. If there are internal controls of the insurer or group of insurers that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements and those internal controls were not included in the scope of the

Section 404 Report, the insurer or group of insurers may either file a §13731 report, or the Section 404 Report and a §13731 report for those internal controls that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements not covered by the Section 404 Report.

E. Management's Report of Internal Control over Financial Reporting shall include:

1. a statement that management is responsible for establishing and maintaining adequate internal control over financial reporting;

2. a statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles;

3. a statement that briefly describes the approach or processes by which management evaluated the effectiveness of its internal control over financial reporting;

4. a statement that briefly describes the scope of work that is included and whether any internal controls were excluded;

5. disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of December 31 immediately preceding. Management is not permitted to conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one or more unremediated material weaknesses in its internal control over financial reporting;

6. a statement regarding the inherent limitations of internal control systems; and

7. signatures of the chief executive officer and the chief financial officer or equivalent position/title.

F. Management shall document and make available upon financial condition examination the basis upon which its assertions, required in Subsection E of this Section, are made. Management may base its assertions, in part, upon its review, monitoring and testing of internal controls undertaken in the normal course of its activities.

1. Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost effective manner and, as such, may include assembly of or reference to existing documentation.

2. Management's report on internal control over financial reporting, required by Subsection A of this Section, and any documentation provided in support thereof during the course of a financial condition examination, shall be kept confidential by the department.

AUTHORITY NOTE: Promulgated in accordance with the R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2461 (November 2009).

§13733. Exemptions and Effective Dates

A. Upon written application of any insurer, the commissioner may grant an exemption from compliance with any and all provisions of Regulation 98 if the commissioner finds, upon review of the application, that compliance with Regulation 98 would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within 10 days from a denial of an insurer's written request for an exemption from Regulation 98, the insurer may request in writing a hearing on its application for an exemption. The hearing shall be held in accordance with the regulations of the department pertaining to Division of Administrative Law hearing procedures.

B. Domestic insurers retaining a certified public accountant on the effective date of Regulation 98 who qualify as independent shall comply with Regulation 98 for the year ending December 31, 2010 and each year thereafter unless the commissioner permits otherwise.

C. All domestic insurers shall retain a certified public accountant on the effective date of Regulation 98 who qualifies as independent unless the commissioner permits otherwise. All requests for an exemption from the requirement shall be made in writing to the department, and the commissioner shall have the authority to grant an exemption pursuant to R.S. 22:674.

D. Foreign insurers shall comply with Regulation 98 for the year ending December 31, 2010 and each year thereafter, unless the commissioner permits otherwise.

E. The requirements of §13713.D shall be in effect for audits of the year beginning January 1, 2010 and thereafter.

F. The requirements of §13727 are to be in effect January 1, 2010. An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members as opposed to a supermajority because the total written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premium shall have one year following the year the threshold is exceeded but not earlier than January 1, 2010 to comply with the independence requirements. Likewise, an insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one calendar year following the date of acquisition or combination to comply with the independence requirements.

G. The requirements of §13731 and other modified sections, except for §13727 previously covered, are effective beginning with the reporting period ending December 31,

2010 and each year thereafter. An insurer or group of insurers that is not required to file a report because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements shall have two years following the year the threshold is exceeded but not earlier than December 31, 2010 to file a report. Likewise, an insurer acquired in a business combination shall have two calendar years following the date of acquisition or combination to comply with the reporting requirements.

AUTHORITY NOTE: Promulgated in accordance with the R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2462 (November 2009).

§13735. Canadian and British Companies

A. In the case of Canadian and British insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by such companies with their supervision authority duly audited by an independent chartered accountant.

B. For such insurers, the letter required in §13711.B shall state that the accountant is aware of the requirements relating to the annual audited financial report filed with the commissioner pursuant to §13707 and shall affirm that the opinion expressed is in conformity with those requirements.

AUTHORITY NOTE: Promulgated in accordance with the R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2462 (November 2009).

§13737. Severability Provision

A. If any Section or portion of a Section of Regulation 98 or its applicability to any person or circumstance is held invalid by a court, the remainder of the regulation or the applicability of the provision to other persons or circumstances shall not be affected.

AUTHORITY NOTE: Promulgated in accordance with the R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2462 (November 2009).

§13739. Effective Date

A. Regulation 98 shall become effective upon promulgation in the Louisiana Register.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2462 (November 2009).