

NOTICE OF INTENT

**Department of Insurance
Office of the Commissioner**

Regulation 42—Group Self-Insurance Funds
(LAC 37:XIII.Chapter 11)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, and through the authority granted under R.S. 22:1 et seq., and specifically R.S. 22:11, the Department of Insurance hereby gives notice of its intent to amend Regulation 42—Group Self-Insurance Funds. The Department of Insurance is amending Regulation 42 to update statutory references and revise language to align with current law.

The purpose of the amendment of Regulation 42 is to make changes to bring Regulation 42 into alignment with current law. Definitions have been updated. The requirements for an application to create a group self-insurance fund have been revised. The language regarding filing and use of rates has been updated. The procedure for addressing fund insolvencies has been updated. Language regarding required examinations of group self-insurance funds has been added.

Title 37

INSURANCE

Part XIII. Regulations

Chapter 11. Regulation Number 42—Group Self-Insurance Funds

§1101. Definitions

A. When used in this regulation, the following words or terms shall have the following meaning.

* * *

Contingent Liability—the amount that a group self-insurance fund may be obligated to pay in excess of a given fund year's normal premium collected or on hand.

Department—the Louisiana Department of Insurance.

Fiscal Agent—an individual, partnership, or corporation engaged by a group self-insurance fund to carry out the fiscal policies of the fund, invest and disburse assets, and oversee the financial matters of the fund. An administrator may be a fiscal agent.

Gross Premium—premium determined by multiplying the payroll (segregated into the proper workers' compensation job classifications) by the manual premium rates approved by the commissioner.

Group Self-Insurance Fund or Fund—employers who enter into agreements to pool their workers compensation liabilities in accordance with Louisiana Revised Statutes 23:1195.

* * *

Standard Premium—gross premium adjusted by experience modifiers.

Surplus—assets of a group self-insurance fund in excess of loss reserves, actual and contingent liabilities and loss development reserves in all fund years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1200.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1403 (December 1992), amended LR 47:52 (January 2021), LR _____ (_____ 2022).

§1103. Application to Create a Group Self-Insurance Fund

A. All applications to create a group self-insurance fund shall meet the requirements of Louisiana Revised Statutes Title 23, §1195 et seq., any other applicable laws of the state of Louisiana, and this regulation.

B. Applications shall be made in writing on a form provided by the Department.

C. Applications shall be submitted to the Department at least 90 days prior to the effective date for establishment of a fund. Any application submitted with less than 90 days remaining before the desired effective date, or which does not contain answers to all questions, or which is not sworn to and subscribed before a notary public, or which does not contain all required documents, statements, reports, and required information, may be returned without review by the Department.

D. All applications shall be accompanied by:

1. a properly completed indemnity agreement in a form acceptable to the Department, pursuant to §1111 of this regulation;
2. security as required by Louisiana Revised Statutes Title 23, §1195 et seq. and this regulation;
3. copies of acceptable excess insurance or reinsurance policies, pursuant to Louisiana Revised Statutes Title 23, §1195 et seq. and this regulation;
4. a bond covering each third party administrator, pursuant to Louisiana Revised Statutes Title 23, §1195 et seq.;
5. . . .;
6. copies of the fund bylaws and trust agreement or other governance documents;
7. individual application of each member of the fund applying for membership in the fund on the effective date of the fund, and copies of their executed indemnity agreements;
8. evidence of financial strength and liquidity of the members dated as of the date of the filing of the application to satisfy the financial strength and liquidity requirements of Louisiana Revised Statutes Title 23, §1195 et seq. and this regulation;
9. proof that the fund shall have the minimum annual earned normal premium as specified in Louisiana Revised Statutes Title 23, §1195 et seq.;
10. the current annual report or financial statement of any casualty insurance company providing excess or reinsurance coverage for the fund, which meets the requirements of Louisiana Revised Statutes Title 23, §1195 et seq. if such statement is not already on file with the Department;
11. the name, address, and telephone number of the attorney representing the fund, of the qualified actuary for the fund, and of the certified public accountant who will be auditing the annual financial statements of the fund, as well as evidence of appointment of each by the fund;
12. the domicile address in this state where the books and records of the fund will be maintained, and the state from which the fund will be administered;
13. proof of advance payment to the fund by each initial member of the fund of not less than 25 percent of that member's first year estimated annual earned normal premium;
14. a feasibility study, or other analysis, prepared by a qualified actuary utilizing actual loss history of the initial members of the fund;
15. pro forma financial statements projecting the first three years of operations of the fund based upon a feasibility study or other analysis prepared by a qualified actuary, pursuant to Louisiana Revised Statutes Title 23, §1195 et seq. and §5(A) hereof. Such pro forma financial statements shall include a pro forma balance sheet, income statement, and statement of cash flow. Each shall be prepared in accordance with generally accepted accounting principles;
16. a copy of the fund's premium billing policy indicating whether the premium payments to the fund will be paid by members annually, monthly, quarterly, or any combination thereof.

E. Upon receipt of the application and other required materials, the Department will review the application and will request any additional information which is required in a letter to the applicant.

F. – G. . . .

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1200.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1403 (December 1992), amended LR 47:52 (January 2021), LR _____ (_____ 2022).

§1105. Conditions for Retaining the Self-Insurance Privilege

A. The certificate of authority shall be continuous until revoked or suspended by the Department, or until it is voluntarily surrendered by the fund.

B. All funds shall be required to submit the following documents and reports:

1. – 2. . . .;

3. annual actuarial reports prepared by a qualified actuary;

4. changes in items required to be furnished under §1103.D.1, 2, 3, 4, 6, 10, 11, and 12 within 10 days of the effective date of such change;

5. any other documents permitted or required by regulation or statute.

C. – F. . . .

G. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1200.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1403 (December 1992), amended LR 47:52 (January 2021), LR _____ (_____ 2022).

§1107. Financial and Actuarial Reports for Group Self-Insurance Funds

A. Each fund shall submit a current financial statement, audited by an independent certified public accountant, of at least two members showing, at the inception of the fund, a combined net worth of a minimum of \$500,000, current financial statements of all other members, a combined ratio of current assets to current liabilities of more than one to one, a combined working capital of an amount establishing financial strength and liquidity of the members to pay normal compensation claims promptly, and showing evidence of the financial ability of the group to meet its obligations. A certified audit or a financial statement properly certified by an officer, owner, or partner for all members joining the fund after the inception date shall be submitted to the commissioner until such time as a certified annual audit report is available for the fund as a whole. In no event shall the cumulative net worth or ratio of the current assets to current liabilities of all members be less than that required in this Subsection.

B. . . .

C. Actuarial reviews shall be made by a qualified actuary. Actuarial reports shall be due and filed at the same time as the fund's annual financial statement, except as otherwise provided by the commissioner.

D. . . .

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1200.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1403 (December 1992), amended LR 47:52 (January 2021), LR _____ (_____ 2022).

§1109. Excess Insurance Requirements for Group Self-Insurance Funds

A. All funds shall maintain specific excess insurance or reinsurance in the amount of at least \$2,000,000 per occurrence and aggregate excess insurance or reinsurance of at least \$2,000,000.

B. – C.2. . . .

C.3. for funds with a loss fund greater than or equal to \$100,000,000, the maximum retention shall be 4 percent of the fund's loss fund;

C.4.-L. . . .

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1200.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1403 (December 1992), amended LR 47:52 (January 2021), LR _____ (_____ 2022).

§1111. Indemnity Agreement

A. . . .

B. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1200.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1403 (December 1992), amended LR 47:52 (January 2021), LR _____ (_____ 2022).

§1113. Rates and Reporting of Rates

A. Each fund shall file rates on an actuarially justified class code basis with the Department and may use the rates 90 days after filing, unless the Department disapproves the use of such rates within the 90-day period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1200.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1403 (December 1992), amended LR 47:52 (January 2021), LR _____ (_____ 2022).

§1115. Authorized Investments for Group Self-Insurance Funds

A. Amounts not needed for current obligations may be invested by the board of trustees in deposits in federally insured banks or savings and loan associations or in direct obligations of the United States government or direct obligations of the state of Louisiana, or in any other investments permissible under R.S. 23:1196.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1200.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1403 (December 1992), amended LR 47:52 (January 2021), LR _____ (_____ 2022).

§1117. Premium Audit

A. All self-insurance funds shall determine the normal premium due from each member in each policy year based on actual audited payroll. Audits shall consist of physical on-site audits or mail self-audits. The requirements set forth herein shall apply to the fund and its present or former members. Funds shall be responsible for compliance with this Subsection by contracted audit personnel or firms.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1200.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1403 (December 1992), amended LR 47:52 (January 2021), LR _____ (_____ 2022).

§1121. Group Membership; Termination, Liability

A. An employer joining a fund after the group has been issued a certificate of approval shall:

A.1.-E. . . .

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1200.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1403 (December 1992), amended LR 47:52 (January 2021), LR _____ (_____ 2022).

§1127. Deficits and Insolvencies

A. In the event that a fund is insolvent, the fund shall file a written plan within sixty days, signed by the board of trustees, detailing the means by which the fund intends to eliminate the insolvency. The means of eliminating the insolvency may include an assessment of the members of the fund. The fund shall also include the timetable for implementation and requirements for reporting to the Department. Within thirty days of receiving the plan, the Department shall review the plan and notify the fund of the approval or disapproval of the plan.

B. If the Department disapproves a plan submitted by the fund or determines that a fund is not implementing a plan in accordance with the plan terms, the Department shall notify the fund in writing of such decision or determination.

C. If the fund fails to file a plan to eliminate an insolvency, or should the Department notify a fund that a plan has been disapproved or that the fund is not implementing the plan according to the plan, the Department shall have the following powers and authority in addition to any other powers and authority granted under law:

1. The Department may order the fund to immediately levy an assessment upon its members that will eliminate the insolvency.

2. If the fund fails or refuses to assess its members, the Department may levy an assessment upon fund members in the name of the fund.

D. Repealed.

E. Repealed.

F. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1200.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1403 (December 1992), amended LR 47:52 (January 2021), LR _____ (_____ 2022).

§1129. Review of Rate Determination

A. Funds shall provide reasonable means whereby any member aggrieved by the application of the fund's rating system may, in writing, request a review of the manner in which such rating system has been applied in connection with the coverage afforded. The fund shall have 30 days from receipt to grant or deny the request, in writing. If the fund rejects such request or fails to grant or reject such request within such 30-day period, the member may, within 30 days following the expiration of such 30-day period, appeal to the commissioner, who, after a hearing held upon not less than 10 days' written notice to the member and to the fund, may affirm, modify, or reverse such action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1200.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1403 (December 1992), amended LR 47:52 (January 2021), LR _____ (_____ 2022).

§1131. Cease and Desist Orders and Other Penalties

A. 1. The Department shall have authority to issue cease and desist orders and suspend or revoke the certificate of authority of any fund which the Department determines is not in compliance.

2. Upon finding, after notice and opportunity for a hearing, that any person or group has violated any cease and desist order, the commissioner may revoke the group's certificate of authority.

B. Upon the determination that a fund failed to comply with any provision of R.S. 23:1195-1200.17, any rule or regulation promulgated by the Department or orders or directives issued by the commissioner, the department may levy a fine of up to two thousand dollars (\$2,000.00) for each violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1200.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1403 (December 1992), amended LR _____ (_____ 2022).

§1135. Examinations

A. The commissioner shall examine, not less frequently than once every five years, and at any other time when an examination is necessary in the opinion of the commissioner, all group self-insurance funds established pursuant to R.S. 23:1191 et seq. The expenses of such examinations shall be paid by the fund being examined.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1200.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1403 (December 1992), amended LR _____ (_____ 2022).

Family Impact Statement

1. Describe the Effect of the Proposed Regulation on the Stability of the Family. The proposed amended regulation should have no measurable impact upon the stability of the family.

2. Describe the Effect of the Proposed Regulation on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. The proposed amended regulation should have no impact upon the rights and authority of children regarding the education and supervision of their children.

3. Describe the Effect of the Proposed Regulation on the Functioning of the Family. The proposed amended regulation should have no direct impact upon the functioning of the family.

4. Describe the Effect of the Proposed Regulation on Family Earnings and Budget. The proposed amended regulation should have no direct impact upon family earnings and budget.

5. Describe the Effect of the Proposed Regulation on the Behavior and Personal Responsibility of Children. The proposed amended regulation should have no impact upon the behavior and personal responsibility of children.

5. Describe the Effect of the Proposed Regulation on the Ability of the Family or a Local Government to Perform the Function as Contained in the Rule. The proposed amended regulation should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the rule.

Small Business Analysis

The impact of the proposed regulation on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed regulation that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed regulation on small businesses.

1. Identification and Estimate of the Number of the Small Businesses Subject to the Proposed Rule. The proposed amended regulation should have no measurable impact upon small businesses.

2. The Projected Reporting, Record Keeping, and Other Administrative Costs Required for Compliance with the Proposed Rule, Including the Type of Professional Skills Necessary for Preparation of the Report or Record. The proposed amended regulation should have no measurable impact upon small businesses.

3. A Statement of the Probable Effect on Impacted Small Businesses. The proposed amended regulation should have no measurable impact upon small businesses.

4. Describe any Less Intrusive or Less Costly Alternative Methods of Achieving the Purpose of the Proposed Rule. The proposed amended regulation should have no measurable impact on small businesses; therefore, will have no less intrusive or less cost alternative methods.

Poverty Impact Statement

1. Describe the Effect on Household Income, Assets, and Financial Security. The proposed amended regulation should have no effect on household income assets and financial security.

2. Describe the Effect on Early Childhood Development and Preschool through Postsecondary Education Development. The proposed amended regulation should have no effect on early childhood development and preschool through postsecondary education development.

3. Describe the Effect on Employment and Workforce Development. The proposed amended regulation should have no effect on employment and workforce development.

4. Describe the Effect on Taxes and Tax Credits. The proposed amended regulation should have no effect on taxes and tax credits.

5. Describe the Effect on Child and Dependent Care, Housing, Health Care, Nutrition, Transportation and Utilities Assistance. The proposed amended regulation should have no effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance.

Provider Impact Statement

1. Describe the Effect on the Staffing Level Requirements or Qualifications Required to Provide the Same Level of Service. The proposed amended regulation will have no effect.

2. The Total Direct and Indirect Effect on the Cost to the Provider to Provide the Same Level of Service. The proposed amended regulation will have no effect.

3. The Overall Effect on the Ability of the Provider to Provide the Same Level of Service. The proposed amended regulation will have no effect.

Public Comments

Interested persons who wish to make comments may do so by writing to Lisa Henson, Staff Attorney, Louisiana Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214, by faxing comments to (225) 342-1632, or electronically at regulations@ldi.la.gov. Comments will be accepted through the close of business, 4:30 p.m., Monday, July 11, 2022.

James J. Donelon
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Regulation 42—Group Self-Insurance Funds

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule changes will not result in additional costs or savings for state or local governmental units. The rule revisions repeal Regulation 80, which was implemented under the provisions of Act 878 of 2004. This regulation exempted commercial property and casualty insurers from the rate approval process unless the commissioner determines that the market for a line of insurance is noncompetitive. LDI is amending Regulation 42 to update statutory references and revise language to align with current law.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule changes will not affect revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule change will not result in any costs and/or economic benefits to directly affected persons or non-governmental groups. The rule revisions amend Regulation 42. LDI is amending Regulation 42 to update statutory references and revise language to align with current law.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule changes will not affect competition or employment.