



LOUISIANA DEPARTMENT OF INSURANCE

JAMES J. DONELON
COMMISSIONER

August 9, 2021

The Honorable Patrick Page Cortez
President, Louisiana State Senate
P.O. Box 94183
Baton Rouge, LA 70804

ELECTRONIC TRANSMISSION
apa.senatepresident@legis.la.gov

The Honorable Clay Schexnayder
Speaker, Louisiana House of Representatives
P.O. Box 94062
Baton Rouge, LA 70804

ELECTRONIC TRANSMISSION
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The Honorable Kirk Talbot
Chairman of the Senate Insurance Committee
P.O. Box 94183
Baton Rouge, LA 70804

ELECTRONIC TRANSMISSION
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The Honorable Chad Brown
Chairman of the House Insurance Committee
P.O. Box 94062
Baton Rouge, LA 70804

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RE: Summary Report – Rule 12—Transmission of Forms and Documents

Dear President Cortez, Speaker Schexnayder, Senator Talbot, and Representative Brown:

The Louisiana Department of Insurance (LDI) hereby submits the following summary report required by La. R.S. 49:968(D)(1)(b), and announces its intention to proceed to finalize the amendment of Rule 12, which was published as a Notice of Intent in the June, 2021 edition of the *Louisiana Register*.

Interested persons were provided an opportunity to submit comments to the LDI on the proposed regulation. The LDI received one comment from Claim Toolkit in support of the proposed amendment in response to the Notice of Intent and responded accordingly. Farm Bureau's comment and the LDI's response are summarized below and enclosed for your review.

Facsimile Transmission dated June 29, 2021 from Claim Toolkit:

Comment No. 1: Claim Toolkit stated that they believe the proposed changes are in the best interest of the insurance industry, as it will allow insurers greater flexibility in how they submit documents to the LDI and will make it easier for insurers to remain compliant with regulations.

Response to Comment No. 1: The LDI responded to Claim Toolkit, acknowledging receipt of the comment and thanking them for sharing their thoughts. No action needed to be taken on the comment, as it was expressing general support and not suggesting any changes to the proposed amendment.

Subject to legislative oversight, the LDI would like to finalize the amendment of Rule 12 and submit the rule to the Office of the State Register for publication in the September, 2021 edition of the Louisiana Register. A copy of the summary report will be placed on the LDI's website in accordance with La. R.S. 49:968(D)(1)(c).

If you have any questions or need any additional information, please contact me at (225) 219-7851, or electronically at Lisa.Henson@ldi.la.gov.

Sincerely,



Lisa L. Henson
Staff Attorney
Louisiana Department of Insurance

Enclosure: Notice of Intent to Amend Rule 12—Transmission of Forms and Documents

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Regulation 115—Title Insurance
Record Retention**

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

The proposed regulation will not result in implementation costs or savings to state or local governmental units. The proposed regulation enacts Regulation 115—Title Insurance Record Retention that implements the provisions of R.S. 22:533, which provide that the LA Department of Insurance (LDI) may prescribe the specific record entries and retention period of documents that are to be kept by licensed title insurers and producers.

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

The proposed regulation will have no impact on state or local governmental revenues.

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

The proposed regulation will impact every title insurer and producer in the manner of how to retain sufficient records of its affairs, including evidence of the examination of title and determination of insurability and records of its escrow operations and escrow accounts for a period of ten years.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

The proposed regulation will have no impact upon competition and employment in the state.

Denise Gardner
Chief of Staff
2106#057

Alan M. Boxberger
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Insurance
Office of the Commissioner**

**Rule 12—Transmission of Forms and Documents
(LAC 37:XI.Chapter 9)**

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 Rule 12—Transmission of Forms and Documents. The Department of Insurance is amending Rule 12 to expand the methods that insurers or regulated entities may utilize for delivery of documents to the Department of Insurance. Specifically, Rule 12 is being amended to allow for the use of private or commercial interstate carriers as an acceptable method for delivery of documents to the Louisiana Department of Insurance.

**Title 37
INSURANCE
Part XI. Rules**

**Chapter 9. Rule Number 12—Transmission of Forms
and Documents**

**§901. Transmission of Forms and Documents Filed
with the Department of Insurance**

A. All forms, documents, applications, filings, financial reports, and any and all other forms and types of documents

required by law or voluntarily filed with the commissioner by any insurer or entity regulated by the commissioner shall be filed by depositing the same in the United States mail, postage prepaid, and/or with a private or commercial interstate carrier, and/or via electronic transmission. Payment of fees, including license fees, and premium taxes shall be exempt from this Rule.

B. No document of any sort or kind described in §901.A will be accepted or received by the personnel of the department as having been filed with the department unless the same is transmitted to the department via the United States mail, a private or commercial interstate carrier, and/or electronic transmission.

C. The department shall retain the envelope or other evidence of submission method attached to the document.

D.1. Transmission of documents by private courier service without interstate service or by hand delivery is permissible as long as the documents are:

a. subsequently mailed in the United States Postal Service or delivered to a private or commercial interstate carrier for shipping and received by the department on or before the twentieth day after receipt of the private courier delivery, or hand delivery; or

b. ...

2. A document received in accordance with §901 shall be deemed received on the date of the department's receipt of the original private courier delivery without interstate service or hand delivery. Any departmental decision shall be based on the date of the initial private courier delivery or hand delivery, and any stamp of approval shall be affixed to those documents.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 22.2.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 17:1210 (December 1991), amended LR 18:620 (June 1992), amended by the Department of Insurance, Office of the Commissioner, LR 29:41 (January 2003), amended LR 45:63 (January 2019), LR 47:

§903. Definitions

A. The following terms used in Rule 12 have the meanings set forth below:

Commissioner—the Commissioner of the Louisiana Department of Insurance

Department—the Louisiana Department of Insurance

Private or Commercial Interstate Carrier—any person or entity engaged in the business of accepting documents for transportation and delivery between one State, Territory, Possession, or the District of Columbia and another State, Territory, Possession, or the District of Columbia.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22.2.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 47:

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, or by faxing comments to (225) 342-1632. Comments will be accepted through the close of business, 4:30 p.m., July 20, 2021.

James J. Donelon
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Rule 12—Transmission of Forms and Documents

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 amend Rule 12 to allow for the use of private or commercial interstate carriers as an acceptable method for delivery of documents to the Louisiana Department of Insurance.

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, SMALL BUSINESSES 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 Rule 12 to allow for the use of private or commercial interstate carriers as an acceptable method for delivery of documents to the Louisiana Department of Insurance.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule changes will not affect competition or employment.

Denise Gardner
Chief of Staff
2106#029

Alan M. Boxberger
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue Policy Services Division

Abatement of Presumed Accuracy-Related Penalties (LAC 61.III.2121-2125)

Under the authority of R.S. 47:1511, and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, gives notice that rulemaking procedures have been initiated to enact LAC 61.III.2121-2125, to provide guidance on the exceptions to the presumption of penalties provided in R.S. 47:1604.1 and to provide procedures for requesting abatement of a presumed penalty.

R.S. 47:1511 authorizes the secretary to prescribe rules and regulations to carry out the purposes of Title 47 and the purposes of any other statutes or provisions included under the secretary's authority. Pursuant to R.S. 47:1604.1(A)(2), the negligence penalty is presumed to apply if the taxpayer understates tax liability by ten percent or more. However, such penalty shall not apply if the understatement is due to reasonable cause where the taxpayer acted in good faith. Additionally, pursuant to R.S. 47:1604.1(E)(3), willful disregard is presumed when a taxpayer fails to timely remit tax that is withheld or collected from others, absent a showing of good cause. The purpose of this regulation is to provide further guidance on regarding the reasonable cause and good faith and the good cause exceptions and to provide procedures for requesting relief when the exceptions apply.

Title 61

REVENUE AND TAXATION

Part III. Administrative and Miscellaneous Provisions

Chapter 21. Interest and Penalties

§2121. Reasonable Cause and Good Faith Exception to Presumption in R.S. 47:1604.1(A)(1)

A. Definitions. For purposes of this Section, the following terms shall have the meaning ascribed herein.

Advice—any communication, including the opinion of a professional tax advisor, setting forth the analysis or conclusion of a person, other than the taxpayer, provided to (or for the benefit of) the taxpayer and on which the taxpayer relies, directly or indirectly, with respect to the imposition of the R.S. 47:1604.1 negligence penalty. Advice does not have to be in any particular form.

Professional Tax Advisor—a person or entity whose job duty, function or service focuses on or involves providing tax and tax related advice or products, which may include the preparation of or providing the use of or access to tax returns, forms or documents

Professional Tax Preparer—a person or entity whose job duty, function or service focuses on or involves the preparation of or providing the use of or access to tax returns, forms or documents, which may include providing tax and tax related advice or products.

B. The penalty for negligent failure to comply authorized in R.S. 47:1604.1(A)(1) is presumed to apply when a taxpayer understates his tax liability by ten percent or more, but did not demonstrate a willful disregard of the tax laws.

C. The presumed penalty shall not apply when the understatement was due to reasonable cause where the taxpayer acted in good faith.

D. A determination of reasonable cause and good faith will be made on a case-by-case basis, considering all relevant facts and circumstances.

1. Generally, the most important factor in determining reasonable cause and good faith is the extent of the taxpayer's effort to assess the proper tax liability.

2. Circumstances that may indicate the extent of the taxpayer's effort to assess the proper tax liability, include but are not limited to:

a. an honest misunderstanding of fact or law that is reasonable in light of all of the facts and circumstances, including the experience, knowledge, and education of the taxpayer;

b. an isolated computational or transcriptional error;

c. Reliance on an information return, advice, or other facts, if under all the circumstances such reliance was reasonable and the taxpayer acted in good faith.

3. Reliance on an information return, including the return of a pass-through entity, or on the advice of a professional tax advisor or tax preparer does not automatically demonstrate reasonable cause and good faith.

a. All facts and circumstances shall be considered when determining whether a taxpayer has reasonably relied in good faith on an information return or the advice of a professional tax advisor or tax preparer. Facts to be considered include, but are not limited to, the taxpayer's education, sophistication and business experience.

b. A determination of whether a taxpayer acted with reasonable cause and in good faith with respect to an underpayment that is related to an item reflected on the return of a pass-through entity will take into account the taxpayer's own actions, as well as the actions of the pass-through entity.

c. Generally, a taxpayer knows, or has reason to know, that the information on an information return is incorrect if such information is inconsistent with other information reported or otherwise furnished to the taxpayer, or with the taxpayer's knowledge of the transaction. This knowledge includes, for example, the taxpayer's knowledge of the terms of his employment relationship or of the rate of return on a payor's obligation.

d. Reliance shall not be considered reasonable or in good faith if the taxpayer knew, or reasonably should have known, that the advice was rendered by a non-tax professional or non-tax preparer, or a professional tax advisor or tax preparer who lacked knowledge in the relevant aspects of federal or Louisiana tax law.

FAX

To: Lisa Henson, Louisiana Department of Insurance
Fax Number: 225-342-1632
Date: 7/8/2021

From: Elena Stein
Company: Claim Toolkit
Pages: 2

Elena Stein
Research/Development Counsel Specialist
Claim Toolkit
2863 West 95th St., Suite 143 - 194
Naperville, Illinois 60564

June 29, 2021

Attn: Lisa Henson
Staff Attorney
Louisiana Department of Insurance
P.O. Box 94214
Baton Rouge, LA 70804-9214

Dear Ms. Henson,

I am writing to you on behalf of Claim Toolkit, a leading provider of compliance software solutions to the property and casualty insurance industry, to provide commentary on the proposed change to Rule 12.

We have reviewed the proposed changes and believe that it is in the best interest of the insurance industry to allow insurers to utilize private or commercial interstate carriers to deliver documents to the DOI. We believe this change will allow insurers greater flexibility and choice in how they provide necessary documents to the DOI and therefore increase the ease and efficiency of remaining compliant with existing regulations. Considering the impact COVID-19 has had on the insurance industry and delays in standard delivery, we are in support of increasing the methods in which insurers can remain compliant with transmission and delivery requirements.

We hope that the DOI will continue to expand its regulations to provide common sense rule modifications and improved methodology where needed for insurers moving forward.

Thank you for your consideration.

Sincerely,
Elena Stein
Research/Development Counsel Specialist

From: [Lisa Henson](#)
To: info@claimtoolkit.com
Subject: Attn: Elena Stein - Louisiana Department of Insurance Amendment of Rule 12
Date: Thursday, August 5, 2021 3:38:00 PM
Attachments: [Comment from Claim Toolkit in support of Rule 12 amendment.pdf](#)

Dear Ms. Stein,

We are in receipt of your attached comment in support of the Louisiana Department of Insurance's proposed amendment to Rule 12, allowing for greater choice in the use of carriers to deliver documents to the Department. Thank you for taking time to share your thoughts with us.

Sincerely,

Lisa L. Henson

Attorney

Louisiana Department of Insurance

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