

22:2, 11 and 2098.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:620 (June 1992), amended LR 18:1401 (December 1992), amended LR 42:1940 (November 2016).

### §911. Severability

A. If any Section or provision of Regulation 40 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 40 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 40 and the application to any persons or circumstances are severable.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:2, 11 and 2098.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 42:1940 (November 2016).

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

**Editor's Note:** In the 1995 Louisiana legislative regular session, Act 703 enacted Subpart J of Part I of Chapter 10 of Title 23 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 23:1195 through 1200.1, and repealed R.S. 23:1191 through 1194, relative to group self-insurance funds. In the 2007 Louisiana legislative regular session, Act 384 enacted R.S. 23:1191 to provide definitions. In Regulation 42, any reference in the authority note to R.S. 23:1193 should be replaced with 23:1200.1 and any reference in the body of Regulation 42 to R.S. 23:1191, 1192, 1193 and 1194 should be replaced with R.S. 23:1195 et seq.

### §1101. Definitions

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

**Administrator**—an individual, partnership, or corporation engaged by a group self-insurance fund to carry out the policies of the trustees of the fund and to provide day-to-day management of the fund.

**Aggregate Losses**—the amount of all claims, including reserves for loss development and losses incurred but not reported, which exceeds the loss fund.

**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.

**Incurred but not Reported Reserves**—a reserve established which estimates the incurred loss of claims whose existence is unknown by the fund or claims which have been reported but not recorded on the books of the fund.

**Insolvency**—the condition existing when the fund's liabilities before member distribution payable or dividend payable are greater than the fund's assets determined in accordance with generally accepted accounting principles as delineated in the fund's financial statement audited by an independent certified public accountant. For the purposes of determining insolvency, assets will not include intangible property, such as patents, trade names, or goodwill.

**Loss Development**—the change in incurred loss from one point in time to another.

**Loss Development Reserve**—any amount needed in a given fund year, in addition to current loss reserves, to fund future loss development.

**Loss Fund**—the retention under the terms of an aggregate excess contract, or if no aggregate excess is purchased, the amount remaining from normal premium in each fund year after all necessary expenses are paid.

**Normal Premium**—standard premium less allowed discount.

**Qualified Actuary**—a person who:

a. meets the basic education, experience and continuing education requirements of the Specific Qualification Standard for Statements of Actuarial Opinion, NAIC Property and Casualty Annual Statement, as set forth in the Qualification Standards for Actuaries Issuing Statements of Actuarial Opinion in the United States (U.S. Qualifications Standards), promulgated by the American Academy of Actuaries (Academy) and as adopted in Chapter 161 of this Part;

b. has obtained and maintains an Accepted Actuarial Designation; and

c. is a member of a professional actuarial association that requires adherence to the same Code of Professional Conduct promulgated by the Academy, requires adherence to the U.S. Qualification Standards, and participates in the Actuarial Board for Counseling and Discipline when its members are practicing in the U.S.

**Standard Premium**—gross premium adjusted by experience modifiers.

**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 49:267 (February 2023).

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

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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. a certification from a designated depository attesting to the amount of monies on hand;

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. Failure to meet any of the criteria or provide needed information shall be grounds for denial of the application.

G. Within 45 days of receipt of all requested information, the commissioner shall issue a decision approving or denying the application, or shall extend his time for review.

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), LR 49:267 (February 2023).

### **§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. annual financial statements certified by an independent certified public accountant pursuant to §1107.B hereof;

2. estimated breakdown of policy year expenses pursuant to §1107.D hereof;

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. All funds shall maintain a combined net worth of their members sufficient to pay all claims.

D. Each fund shall notify the commissioner, within 10 days of receiving knowledge thereof, of any claim, whether such claim is in litigation or otherwise, against the fund which, if the claimant is successful, would create an obligation of the fund to pay in excess of 50 percent of the fund's specific self-insured retention or \$125,000, whichever is less.

E. The commissioner may prescribe the format and frequency of other reports which may include, but shall not be limited to, payroll audit reports, summary loss reports, and quarterly financial statements.

F. The commissioner may require periodic proof that the fund is complying with the applicable laws, rules, regulations, and directives of the Department of Insurance.

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), LR 49:268 (February 2023).

#### **§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 \$1,000,000, 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. An annual financial statement audited by an independent certified public accountant 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 an annual financial statement audited by an independent certified public accountant is available for the fund as a whole. Thereafter, the filing of member financial statements with the department is no longer required. 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. An annual financial statement audited by an independent certified public accountant shall be due annually within six months of the close of the fiscal year of the fund, unless an extension is granted by the commissioner, on a form acceptable to the commissioner.

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.

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), LR 49:268 (February 2023).

#### **§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. For the purposes of §1109, no loss fund shall be less than 70 percent of earned normal premium without the approval of the commissioner.

C. The commissioner shall deny the use of a retention requested by a fund if he finds:

1. that the higher retention will have a significant adverse effect on the financial condition of the fund; or

2. that the fund is unable to establish reserves using monies from:

a. premium earned during the year the loss was incurred; or

b. investment earnings from the year in which the loss was incurred; or

c. from future investment earnings on the specific loss reserve.

D. Each fund shall provide security for aggregate losses by selecting one of the following alternatives:

1. purchasing an acceptable aggregate excess policy;

2. upon approval of the commissioner, post a cash security deposit in the amount of \$1,000,000 or 20 percent of annual standard premium, whichever is greater; or

3. if the fund has been in operation at least 60 months, upon approval of the commissioner, establish an actuarially sound reserve for aggregate losses.

E. If the option in §1109.G2 is selected, a fund, upon approval of the commissioner, may self-insure part of its aggregate limit by posting as a cash security deposit for the amount which is self-insured.

F. If a fund receives permission to provide security for its aggregate losses by establishing an aggregate reserve, the fund shall comply with the following requirements.

1. At least 60 days prior to the beginning of each policy year for which an aggregate reserve will be established, the fund shall submit a plan for that year. Approval of the plan by the commissioner shall be required before an aggregate reserve may be established for the next policy year.

2. Within six months after the end of each fund year, the fund shall submit an actuarial review, by a qualified actuary, of its aggregate reserve for each fund year whose aggregate losses are guaranteed by the reserve.

3. Along with the actuarial review, the fund shall provide financial information which sets forth the financial position of the aggregate reserve.

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4. In actuarially determining the amount of ultimate loss, the fund and its actuary may take into account current or future recoveries from any aggregate or specific excess contract, if such contract complies with this regulation.

G. The commissioner may:

1. reject an actuarial review or financial report which does not comply with the requirements of §1109.L. If this occurs, the commissioner may, at the expense of the fund, conduct his own actuarial or financial review, or, upon request of the fund, allow the fund to submit another actuarial or financial report, subject to the commissioner's approval of the party preparing the report;

2. for good cause, order a fund to cease using an aggregate reserve for securing its aggregate losses. Good cause shall include a finding that the aggregate reserve is actuarially unsound, that the fund is insolvent, that the fund will lack sufficient liquidity to run off its claims without reliance on future premium income, or that the fund has failed to comply with the provisions of this regulation;

3. in the event that the fund's aggregate reserve, or reserves, is actuarially unsound, order the fund to take such corrective action as necessary to make the reserve actuarially sound.

H. If a fund receives approval of its plan to use an aggregate reserve to provide security for its aggregate losses, then:

1. payment of dividends from premium in a fund year shall not be requested or approved for that fund year as long as any claims reserves, reserves for loss development, or reserves for losses incurred but not reported (IBNR) are unfunded by actual cash reserves;

2. no dividends shall be requested or approved from investment earnings unless the aggregate reserves for all years are actuarially sound, taking into account future contributions, and aggregate excess insurance;

3. advance premium discounts and all expenses unnecessary for the fund to meet its obligations will be reduced or eliminated, if necessary, to provide funds to make an aggregate reserve actuarially sound;

4. amounts actuarially determined to be necessary for the reserves for loss development and IBNR shall be a part of the fund's security deposit requirement;

5. no premium from a year prior to the year for which the aggregate reserve is established may be allocated to fund an aggregate reserve until 12 months after the close of the prior year.

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), LR 49:269 (February 2023), repromulgated LR 49:490 (March 2023).

### §1111. Indemnity Agreement

A. Each self-insurance fund member shall enter into an indemnity agreement jointly and severally binding the self-

insurance fund and each member thereof to comply with the provisions of the applicable Louisiana Revised Statutes and rules, regulations, and directives of the Department of Insurance.

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), LR 49:269 (February 2023).

### §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), LR 49:269 (February 2023).

### §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), LR 49:269 (February 2023).

### §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, mail self-audits, telephone audits, or virtual 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 either an independent payroll audit firm or by the fund.

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), LR 49:269 (February 2023).

### §1119. Board of Trustees

A. Except upon approval of the commissioner, the fund's administrator, service company, or any owner, officer, employee of, or any other person affiliated with, such administrator or service company shall not serve on the board of trustees of the fund.

B. All trustees shall be residents of this state or officers of corporations authorized to do business in this state.

C. The board of trustees of each group shall ensure that all claims are paid promptly and take all necessary precautions to safeguard the assets of the group, including

all of the following:

1. maintain responsibility for all monies collected or disbursed from the group and segregate all monies into a claims fund account and an administrative fund account. At least 70 percent of the premium, as determined by the commissioner, shall be designated for the sole purpose of paying claims, allocated claims expenses, and special fund contributions, including second injury and other loss related funds. This shall be called the claims fund account. The remaining net premium shall be designated for the payment of taxes, general regulatory fees, assessments, and administrative costs. This shall be called the administrative fund account. The commissioner may approve an administrative fund account of more than 30 percent and a claims fund account of less than 70 percent only if the group shows to the commissioner's satisfaction that:

a. more than 30 percent is needed for an effective safety and loss control program; or

b. the group's aggregate excess insurance attaches at less than 70 percent;

2. maintain minutes of its meetings;

3. designate an administrator to carry out the policies established by the board of trustees and to provide day-to-day management of the group, and delineate in the written minutes of its meetings the areas of authority it delegates to the administrator;

4. retain an independent certified public accountant to prepare the statement of financial condition required by §1107.A and B hereof;

5. the trustees shall cause to be adopted a set of by-laws or shall enter into a trust agreement which shall govern the operation of the fund.

D. The board of trustees shall not:

1. extend credit to individual members for payment of a premium, except pursuant to payment plans approved by the commissioner;

2. borrow any monies from the group or in the name of the group, except in the ordinary course of business, without first obtaining prior approval from the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1193.

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

#### **§1121. Group Membership; Termination, Liability**

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

1. submit an application for membership to the board of trustees or its administrator; and

2. enter into the indemnity agreement required by §1103.C.1 hereof. Membership shall take effect no earlier than each member's date of approval. The application for membership and its approval shall be maintained as permanent records of the board of trustees.

B. Individual members of a group shall be subject to cancellation by the group's cancellation policy. In addition, individual members may elect to terminate their participation in the group.

C. The group shall pay all workers' compensation benefits for which each member incurs liability during its period of membership. A member who elects to terminate its membership or is canceled by a group remains liable jointly and in solido for claims of the group and its members which were incurred during the canceled or terminated member's period of membership.

D. A group member is not relieved of its workers' compensation liabilities incurred during its period of membership except through payment by the group or the member of required workers' compensation benefits.

E. The insolvency or bankruptcy of a member does not relieve the group or any other member of liability for the payment of any worker's compensation benefits incurred during the insolvent or bankrupt member's period of membership.

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), LR 49:269 (February 2023).

#### **§1123. Service Companies**

A. All service companies must file a request for approval by the commissioner and have a letter or certificate of approval from the commissioner prior to engaging in any service to a fund. All service companies performing services for group self-insurance funds on the effective date of this regulation shall file the request for approval and receive the letter or certificate of approval from the commissioner not later than March 1, 1993. The commissioner may request any information deemed necessary to establish the ability and financial strength of the service company to perform the required functions.

B. Except upon approval of the commissioner:

1. no service company or its employees, officers, or directors shall be an employee, officer, or director of, or have either a direct or indirect financial interest in, an administrator; and

2. no administrator or its employees, officers, or directors shall be an employee, officer, or director of, or have either a direct or indirect financial interest in, a service company.

C. The service contract shall state that, unless the commissioner approves otherwise, the service company shall handle, to their conclusion, all claims and other obligations incurred during the contract period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1193.

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

#### **§1125. Licensing of Agents**

A. Any person soliciting membership for a fund must be licensed by the commissioner as a property and casualty agent; provided, however, that employees of a bona fide trade or professional association which has established a fund shall not be required to be so licensed if such solicitation is not the primary duty of such employees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1193.

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

### §1127. Deficits and Insolvencies

A. In the event that a fund is insolvent, the fund shall file a written plan within 60 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 30 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.

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), LR 49:269 (February 2023).

### §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), LR 49:269 (February 2023).

### §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 \$2,000 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 49:270 (February 2023).

### §1133. Revocation of Certificate of Authority

A. After notice and opportunity for a hearing, the commissioner may revoke a group's certificate of authority if:

1. the group is found to be insolvent;
2. the group fails to pay any premium tax, regulatory fee, or assessment, or special fund contribution imposed upon it;
3. the group fails to comply with any of the provisions of this regulation, or with any lawful order of the commissioner within the time prescribed;
4. the certificate of authority issued to the group was obtained by fraud;
5. there was a material misrepresentation in the application for the certificate of authority; or
6. the group or its administrator has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any monies held in a fiduciary capacity that belong to a member, an employee of a member, or another person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1193.

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

### §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 49:270 (February 2023).

## Chapter 13. Regulation

### 43—Companies in Hazardous Financial Condition

#### §1301. Purpose

A. The purpose of Regulation 43 is to set forth the standards which the commissioner of insurance ("commissioner") may use for identifying insurers found to be in such condition as to render the continuance of their business hazardous to their policyholders, creditors, or the general public.

B. Regulation 43 shall not be interpreted to limit the powers granted the commissioner by any laws or parts of laws of this state, nor shall Regulation 43 be interpreted to supersede any laws or parts of laws of this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 and 22:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1408 (December 1992), amended LR 39:3302 (December 2013).

#### §1303. Definitions

A. As used in Regulation 43, the following terms shall have the respective meaning hereinafter set forth.

*Control*—as defined in R.S. 22:691.2(3).

*Person*—as defined in R.S. 22:691.2(7).

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 and 22:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1408 (December 1992), amended LR 39:3302 (December 2013).

#### §1305. Standards

A. The following standards, either singly or a combination of two or more, may be considered by the commissioner to determine whether the continued operation of any insurer transacting an insurance business in this state might be deemed to be hazardous to their policyholders, creditors, or the general public. The commissioner may consider:

1. adverse findings reported in financial condition and market conduct examination reports, audit reports, and actuarial opinions, reports or summaries;

2. the National Association of Insurance Commissioners insurance regulatory information system and its other financial analysis solvency tools and reports;

3. the ratios of commission expense, general insurance expense, policy benefits, and reserve increases as to annual premium and net investment income which could lead to an impairment of capital and surplus;

4. the ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the insurer's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;

5. whether the insurer's operating loss in the last 13-month period or any shorter period of time, including but not limited to net capital gain or loss, change in non-admitted assets, and cash dividends paid to shareholders, is greater than 50 percent of the insurer's remaining surplus as regards policyholders in excess of the minimum required;

6. whether the insurer's operating loss in the last 12-month period or any shorter period of time, excluding net capital gains, is greater than 20 percent of the insurer's remaining surplus as regards policyholders in excess of the minimum required;

7. whether a reinsurer, obligor or any entity within the insurer's insurance holding company system, is insolvent, threatened with insolvency or delinquent in payment of its monetary or other obligations, and which in the opinion of the commissioner may affect the solvency of the insurer;

8. contingent liabilities, pledges or guaranties which either individually or collectively involve a total amount which in the opinion of the commissioner may affect the solvency of the insurer;

9. whether any "person" in "control" of an insurer is delinquent in the transmitting to, or payment of, net premiums to the insurer;

10. the age and collectibility of receivables;

11. whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of such insurer, fails to possess and demonstrate the competence, fitness, and reputation deemed necessary to serve the insurer in such position;

12. whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;

13. whether management of an insurer either has filed any false or misleading sworn financial statement, or has released any false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer;

14. whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner; or

15. whether management has established reserves that do not comply with minimum standards established by state insurance laws, regulations, statutory accounting standards, sound actuarial principles and standards of practice;

16. whether management persistently engages in