



LOUISIANA DEPARTMENT OF INSURANCE
JAMES J. DONELON
COMMISSIONER

January 4, 2023

The Honorable Patrick Page Cortez
President, Louisiana State Senate
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Baton Rouge, LA 70804

ELECTRONIC TRANSMISSION
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The Honorable Clay Schexnayder
Speaker, Louisiana House of Representatives
P.O. Box 94062
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ELECTRONIC TRANSMISSION
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The Honorable Kirk Talbot
Chairman of the Senate Insurance Committee
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The Honorable Mike Huval
Chairman of the House Insurance Committee
P.O. Box 94062
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RE: Summary Report – Regulation 125 — Insure Louisiana
Incentive Program

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

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 finalize Regulation 125, which was published as a Notice of Intent in the November 2022 edition of the *Louisiana Register*.

Interested persons were provided an opportunity to submit comments to the LDI on the proposed regulation. The LDI received comments in response to the Notice of Intent and the LDI responded accordingly. These comments and the LDI's responses are summarized below and enclosed for your review.

Comment 1: Ardie Cesario submitted the following comment:

Let me begin by thanking all which worked on this proposal. It is thoughtful and concise in its orchestration.

My concern is a similar plan of action uncovered a lack of surplus, reinsurance and personnel to carry out the intent of the program. Due to the plethora of hurricanes it exposed weakness in the prior proposal and will present a major burden to the guaranty association and all those required to restore the fund. To date, as you are aware numerous insurance companies have gone bankrupt or have left the state or refused to write wind and hail exposures in the southern part of Louisiana. Many homeowners and business owners in South Louisiana will face rising insurance rates which will become cost prohibitive and they will face losing their homes and businesses. Bankers and mortgage companies will be receiving deeds in lieu of foreclosures at an increasing rate due to the cost of insurance or the inability to secure proper coverage.

In view of the aforementioned I suggest a feasibility study first be examined in the creation of an Insurance Linked Security (ILS). Whereas a security is created including possible reinsurance and Catastrophe Bonds, or stand alone Cat Bonds to assist qualified insuring companies willing to come to Louisiana. Instead of merely giving them money establish a higher minimum solvency requirement. It is my understanding no current statutory requirement is in place. In reading the proposal no statutory limit is in place for reinsurance as it mentions only sufficient reinsurance be in place. Once we establish a minimum solvency requirement and a reinsurance limit which is in concert with a probable maximum loss study, we then establish an ILS which we assist those insurance company qualifying for our new guidelines. I would suggest the newly formed ILS product be offered to anyone willing to invest in Louisiana. Once established this could give additional cover for those willing to establish single parent captives and group captives. If successful in establishing a markable ILS product it then could become a model for other coastal states.

Time is truly of the essence. If we do not act we face the possibility of losing the stability of numerous families especially those living below interstate 10 and 12. Doing the same thing which was honest in its approach but flawed in its design and execution will respectfully not solve our issue at hand.

LDI Response to Comment 1:

The minimum solvency requirements are addressed in §18915.A of Regulation 125 as mandated in §2365.A of Act 754 of the 2022 Regular Session of the Louisiana Legislature. The remainder of the comment is not pertinent to Regulation 125. However, the comment was routed to the Division of Financial Solvency within the LDI for review.

Comment 2: Brian Cropp requested to be unsubscribed from the LDI Industry Portal Notification System.

LDI Response to Comment 2: The request is not relevant to Regulation 125. However,

the request to be unsubscribed was routed to the proper division within the LDI to be processed accordingly.

Comment 3: H. Marcus Carter, Jr. submitted the following comments:

Please accept our comments on the above.

§18915. Qualifications for Applying Grant Funds

D. Other Requirements

4. Without prior approval of the commissioner, applicant shall not write more than 15 percent of the net written premiums in any one parish.

As I understand it, the grant is intended to provide capacity in the designated regions. I would assume the 15 percent limitation is 15% of the written premiums considered in §18923. Property Incentive Requirements. If it limiting to the participating company's total premium of 15% then the markets in the most might be negatively affected for the captivity.

LDI Response: The LDI rejects the recommendation to make a change to §18915.D.4 as it gives the Commissioner authority to allow companies to exceed the 15% threshold.

§18927. Reporting Requirements

B. 3 (Reporting) The amount of premium by parish taken-out from the Louisiana Citizens Property Insurance Corporation.

The reporting of business "taken-out" should also include policies that the prior policy was with Citizens. As we would not entertain a direct take-out of Citizens, we would target Citizens renewals from our that then would go through our normal underwriting process. Reporting these would provide a better picture of policies actually removed from Citizens.

LDI Response: The LDI rejects the recommendation to make a change to §18927.B.3. The premium written whereby Citizens was the prior carrier may still be reported as "the amount of premium written by parish under the Incentive Program" as described in §18927.B.1.

C. Grantee shall report annually by June 1, detail on catastrophe reinsurance programs maintained, including retentions, limits, reinstatements, as well as the current ratings of each reinsurer.

As most companies renew effective June 1, the nature of the negotiations the final written terms may take a few days to actually be obtained from the reinsurers. We would suggest moving that date to June 15 to give us time to package all of the required information.

LDI Response: The LDI rejects the recommendation to make a change to §18927.C. A company should file whatever information is available at the reporting deadline of June 1st. A supplemental report may be filed if additional information is received after the deadline.

Subject to legislative oversight, the LDI intends to submit Regulation 125 to the Office of

the State Register for final publication in the February 2023 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).

Enclosures: Notice of Intent – Regulation 125;
Public comments received

Allen Enger at (225)342-1342 after December 12, 2022. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Dr. Courtney N. Phillips
Secretary

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

**RULE TITLE: Outpatient Hospital Services
Urban Metropolitan Statistical Area Facility
New Orleans Area**

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

It is anticipated that implementation of this proposed rule will result in estimated programmatic costs of approximately \$1,411,843 for FY 22-23, \$2,073,793 for FY 23-24, and \$2,073,793 for FY 24-25. It is anticipated that \$756 (\$378 SGF and \$378 FED) will be expended in FY 22-23 for the state's administrative expense for promulgation of this proposed and final rule.

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

It is anticipated that implementation of this proposed rule will increase federal revenue collections by approximately \$3,384,920 for FY 22-23, \$4,320,883 for FY 23-24, and \$4,320,883 for FY 24-25. It is anticipated that \$378 will be collected for the federal share of the expense for promulgation of the proposed and final rule.

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

This proposed rule continues the provisions of the October 5, 2022 Emergency Rule, which adopted provisions to establish the criteria for an acute care hospital to qualify as an urban metropolitan statistical area (MSA) facility-New Orleans area and the reimbursement methodology for the provision of outpatient services. This proposed rule will benefit Medicaid beneficiaries by ensuring continued access to a New Orleans area urban MSA facility. This proposed rule is anticipated to increase Medicaid payments to a qualifying hospital by approximately \$4,796,007 for FY 22-23, \$6,394,676 for FY 23-24, and \$6,394,676 for FY 24-25, which will assist the hospital in achieving financial viability and continuing operations so vital healthcare services remain available.

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

This rule has no known effect on competition and employment.

Tara A. LeBlanc
Medicaid Executive Director
2211#059

Alan M. Boxberger
Interim Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Insurance
Office of the Commissioner**

**Regulation 125—Insure Louisiana Incentive Program
(LAC 37:XIII.Chapter 189)**

The Department of Insurance, pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby gives notice of its intent to promulgate Regulation 125 regarding the Insure Louisiana Incentive Program.

Louisiana is currently experiencing a crisis in the availability and affordability of insurance for residential and commercial properties. Louisiana property owners and their insurers sustained catastrophic losses in 2020 and 2021 from hurricanes Laura, Delta, Zeta, and Ida. As the result of their losses and their assessment of the risk of loss from future storms, many property insurers have substantially reduced their participation in the voluntary market for residential and commercial property insurance. With fewer property insurers in the voluntary market, competitive pressure on premium rates is reduced. Current underwriting practices have resulted in a substantial increase in the number of Louisiana property owners forced to obtain their property insurance coverage or their coverage for wind peril from Louisiana Citizens Property Insurance Corporation, the state insurer of last resort.

The Insure Louisiana Incentive Program was enacted through the passage of Act 754 of the 2022 Regular Session of the Louisiana Legislature for the purpose of cooperative economic development and stability in Louisiana by encouraging additional property insurers to participate in the voluntary property insurance market to increase the availability of property insurance, increase competitive pressure on insurance rates, and reduce the volume of business written by the Louisiana Citizens Property Insurance Corporation.

Regulation 125 sets forth standards and procedures relative to a property insurer's participation in the Insure Louisiana Incentive Program. Through cooperative endeavor agreements, property insurers participating in the program may be awarded matching grant funds in order to achieve the requirements of Act 754. Regulation 125 further specifies these requirements and conditions thereof for qualified property insurers.

**Title 37
INSURANCE**

Part XIII. Regulations

**Chapter 189. Regulation Number 125—Insure
Louisiana Incentive Program**

§18901. Purpose

A. The purpose and intent of Regulation 125 is to exercise the authority and carry out the duties and responsibilities of the commissioner for implementation and regulation of the Insure Louisiana Incentive Program, hereinafter referred to as the "Incentive Program."

Regulation 125 sets forth rules and procedural requirements which the commissioner deems necessary for participation in the Incentive Program by qualified property insurers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§18903. Authority

A. Regulation 125 is promulgated pursuant to the authority and responsibility delegated to the commissioner under R.S. 22:2361 through 2371 and pursuant to the general powers granted by law to the commissioner and the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§18905. Applicability and Scope

A. Regulation 125 applies to all property insurers with respect to their qualification and participation in the Incentive Program.

B. Regulation 125 governs all aspects of the Incentive Program including, but not limited to, the invitation and application process for grants, the qualifications of grantees, the award of grants, the use of grant funds, the reporting requirements for grantees, the requirements for matching capital funds, the requirements for minimum capital and surplus, the requirements for earned capital, the requirements for default, and other regulation and administration of the Incentive Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§18907. Definitions

A. For the purposes of Regulation 125, the following terms are defined as follows:

Authorized Insurer—an insurer with a certificate of authority in Louisiana.

Commissioner—the Commissioner of Insurance of the state of Louisiana.

Department—the Department of Insurance of the state of Louisiana.

Domestic Insurer—an insurer formed under the laws of the state of Louisiana that has been authorized by the department to sell insurance products in the state of Louisiana.

Earning Period—the timeframe, including any extension granted by the commissioner, in which the grantee can earn 20 percent or the pro rata share of the grant award.

Grantee—a property insurer to whom a grant is made from the Incentive Program Fund.

Incentive Program (where capitalized)—the Insure Louisiana Incentive Program as created, authorized and administered pursuant to R.S. 22:2361 et seq., and Regulation 125.

Incentive Program Fund (where capitalized)—the Insure Louisiana Incentive Fund established and created pursuant to R.S. 22:2371 and Regulation 125.

Legal Interest—interest at the rate fixed in R.S. 13:4202.

Net Written Premiums—the total premiums, exclusive of assessments and other charges, paid by policyholders to an insurer for policies that comply with Regulation 125, minus any return premiums or other premium credits due policyholders, as defined in R.S. 22:2369(A). Premium received from participation in the depopulation or take-out program of Louisiana Citizens Property Insurance Corporation shall be included in net premiums written.

Newly Allocated Insurer Capital—capital committed by an insurer to match any grant funds received from the Incentive Program Fund.

Reporting Period—the financial statement reporting date of March 31, June 30, September 30, and December 31 of each respective year in the Incentive Program.

Surplus Lines Insurer—an insurer without a certificate of authority that meets the eligibility criteria of R.S. 22:435(A)(2) and (B) and from which a licensed surplus lines broker may procure insurance under the provisions of R.S. 22:432.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§18909. Matching Capital Grants

A. From funds appropriated by the legislature for the Incentive Program Fund established and created in the state treasury under R.S. 22:2371, the commissioner may grant matching capital funds to qualified property insurers in accordance with the requirements of R.S. 22:2361 through 2371 and Regulation 125.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§18911. Public Invitation for Grant Applications

A. Pursuant to R.S. 22:2361 et seq., and Regulation 125, the commissioner shall issue an initial public invitation to property insurers to submit applications for grants under the Incentive Program.

B. The invitation shall be published for at least a 30-day period on the department's web site and in state and national insurance journals and publications as the commissioner deems appropriate.

C. The invitation shall describe the Incentive Program and provide general information about the grant application process.

D. The invitation shall set a deadline for receipt of grant applications. All grant applications should be submitted to the department either by certified mail, return receipt requested, actual delivery by a commercial interstate courier, or electronic mail. Failure to timely submit a grant application may render the property insurer ineligible to participate in the Incentive Program. However, for good cause shown, the commissioner may extend the deadline and consider applications received after the deadline or give a property insurer the opportunity to cure a non-substantive deficiency in the application.

E. In the event that all monies in the Incentive Program Fund are not allocated in response to the first invitation, the commissioner may issue a second invitation for grant applications in the form and pursuant to the procedures utilized for the first invitation.

F. In the event that all monies in the Incentive Program Fund are not allocated in response to the second invitation, the commissioner may issue a third invitation for grant applications in the form and pursuant to the procedures utilized for the first and second invitations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§18913. Applications

A. The department shall provide an application form to be fully completed by grant applicants. The application form may be revised by the department as it deems appropriate.

B. The grant application shall require the property insurer to designate a point of contact with a telephone number, email address and physical address to represent the property insurer on all matters pertaining to the grant process and the Incentive Program.

C. The grant application shall be filed contemporaneously with the application for licensure with the department by a surplus lines insurer. The application for licensure expresses the applicant's intent to become licensed in this state as an authorized insurer and, if specifically requested in writing by the grant applicant in the application for licensure, will be processed contingent upon approval of the allocation of a grant award.

D. Only fully completed grant applications or those deemed acceptable by the commissioner shall be considered for a grant award.

E. The grant application shall be submitted to the department's Office of Financial Solvency, as outlined in the invitations issued under §18911.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§18915. Qualifications for Applying for Grant Funds

A. Minimum Solvency Requirements. Grants shall be made only to property insurers who initially satisfy and thereafter maintain the following minimum solvency requirements:

1. capital and surplus in an amount not less than \$10,000,000;
2. a property insurer with a financial strength rating that meets the following requirements:
 - a. AM Best Company "B" or better; or
 - b. Demotech, Inc. "A" or better; or
 - c. Kroll Bond Rating Agency "BBB" or better; or
 - d. S&P Global "BBB" or better.

Property insurers rated by more than one rating company need only meet one of the rating requirements.

3. risk-based capital ratio of 400 percent at the initial grant award, which shall be maintained during the property insurer's participation in the Incentive Program; and

4. sufficient reinsurance to demonstrate that its reinsurance program is sufficient for the amount of business to be written pursuant to the Incentive Program.

B. Certificate of Authority

1. A property insurer must have an existing certificate of authority in Louisiana for the line or lines of insurance that the property insurer applicant will write pursuant to the Incentive Program or documentation that an application for such licensure has been filed with the Company Licensing Division of the department contemporaneous with the filing of the grant application.

C. Satisfactory Prior Experience

1. Grants shall be made only to property insurers with satisfactory prior experience in writing property insurance or to new property insurers whose management has satisfactory experience in property insurance. The grant application shall accurately disclose the prior experience of property insurers and their management. The commissioner may request additional information from the applicant property insurer and conduct such investigation of prior experience as the commissioner deems appropriate.

2. The commissioner shall determine whether an applicant property insurer has adequate or satisfactory prior experience.

D. Other Requirements

1. Applicant shall maintain premium to surplus ratio, net of reinsurance, no greater than 3 to 1.

2. Applicant shall not insure more than 10 percent of its surplus in any one risk pursuant to R.S. 22:573.

3. Applicant shall maintain gross premium to surplus ratio no greater than 8 to 1.

4. Without prior approval of the commissioner, applicant shall not write more than 15 percent of the net written premiums in any one parish.

5. Applicant shall make a commitment of capital of not less than two million dollars to write property insurance in this state that complies with the requirements of R.S. 22:2369 and §18923 of Regulation 125. Grants from the Incentive Program Fund shall match the newly allocated property insurer capital funds at a ratio of one dollar of allocated property insurer capital funds for each dollar of state capital grant funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§18917. Award and Allocation of Grants

A. Subject to the requirements of this Section, to carry out the purpose and intent of the Incentive Program, the commissioner shall award and allocate grants as the commissioner deems appropriate among qualified property insurers who have applied for grants. The commissioner has the discretion to create an advisory committee to assist in the analysis of grant applications. If created, the advisory committee will be composed of up to five members, designated to serve thereon by the commissioner.

B. The factors considered in awarding grants shall include, but are not limited to, the following:

1. the financial strength and satisfactory prior experience of the applicant;

2. the ability of the applicant to invest new capital and to comply with the other requirements of the grant;

3. the potential of the applicant for providing property insurance as required by the Incentive Program at reasonable and competitive rates, particularly for property owners in the following Louisiana parishes: Acadia, Allen, Ascension, Assumption, Beauregard, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Vernon, Washington, West Baton Rouge, and West Feliciana;

4. the marketing and claims handling capability and experience of the applicant, and particularly its ability to market property insurance in the parishes listed in §18917.B.3 and to handle future claims that may arise;

5. the applicant's longevity in the Incentive Program, including a statement or plan of operation by the applicant demonstrating its intent to remain in this state following the completion of the Incentive Program;

6. the current licensure of the applicant where preference and priority will be given to those admitted property insurers that are currently licensed to do business in this state for the line or lines of business that are the subject of the grant; and

7. any other factors that the commissioner deems applicable, relevant and appropriate in carrying out the purpose and intent of the Incentive Program.

C. For grant applications in response to the initial invitation, the commissioner shall not allocate individual grants of less than \$2,000,000 nor in excess of \$10,000,000.

D. For the initial allocation of grants only, the commissioner shall allocate at least 20 percent of the total amount available for grants to domestic property insurers unless the commissioner has not received sufficient applications from qualified domestic property insurers to allocate such sum.

E. If the commissioner issues a second invitation for grant application, the commissioner shall not allocate individual grants of less than \$2,000,000 nor in excess of \$10,000,000. Property insurers who have been allocated a grant in response to the first invitation may apply for and receive an additional grant, provided the total of the grants to a property insurer does not exceed \$10,000,000.

F. If the commissioner issues a third invitation for grant application, the commissioner shall not allocate individual grants of less than \$2,000,000 nor in excess of \$10,000,000. Property insurers who have been allocated a grant in response to the first or second invitations may apply for and receive an additional grant, provided the total of the grants to a property insurer does not exceed \$10,000,000.

1. Grants made pursuant to a third invitation may be made to property insurers providing coverage against damage to an existing dwelling. Such grant shall be made only as to those policies transferred from an existing dwelling to a new dwelling, provided the risk of catastrophe associated with the new dwelling is the same as or no greater than the level of risk of catastrophe associated with the existing dwelling.

2. Grants shall also be made under the provisions of this Subsection to any property insurer that was forced to reduce coverage, or drop coverage entirely, on existing dwellings in order that the property insurer maintain its financial stability or solvency. A grant made pursuant to this Paragraph shall be contingent on the property insurer reinstating such former coverage or better coverage on the existing dwellings.

G. In no event shall the total amount of the grant to a property insurer exceed 20 percent of that property insurer's capital and surplus as reported to and verified by the department.

H. Prior to the award of any grant pursuant to the provisions of this Chapter, the grant shall be subject to the review and approval of the Joint Legislative Committee on the Budget. The commissioner shall provide written notice to the committee of the grant awards that have been approved. Upon written approval by the committee, the commissioner will be authorized to award the grant and deliver the amount of the grant to the grantee from monies in the Incentive Program Fund.

I. In the event that monies remain in the Incentive Program Fund after allocations pursuant to the third invitation, the commissioner shall cause all remaining monies to be returned to the state general fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§18919. Authorized Insurers

A. A surplus lines insurer may apply for a grant, provided that the surplus lines insurer shall, contemporaneously with the grant application, file an application for licensure with the department for the line or lines of insurance for which it must be authorized and licensed to write for a grant award. If specifically requested in writing by the grant applicant in the application for licensure, such application will be processed contingent upon approval of a grant award.

B. A surplus lines insurer must obtain a certificate of authority to do business in Louisiana as an authorized insurer before it may actually receive grant funding.

C. If the surplus lines insurer does not apply timely to be admitted or subsequently is not approved for a certificate of authority, the surplus lines insurer shall not be entitled to receive a grant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§18921. Certification of Deposit

A. Within 10 days of receipt of any Incentive Program Funds, the grantee shall provide to the commissioner written certification signed by two principal officers of the grantee that the Incentive Program Funds have been deposited in an account held in the name of the grantee and pledged to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§18923. Property Insurance Requirements

A. The grantee shall write new property insurance in Louisiana of the types described in R.S. 22:2369 and this Section of Regulation 125 with net written premiums of at least a ratio of \$2 of premium for each \$1 of the total of newly allocated property insurer capital combined with the grant from the Incentive Program Fund. Thus, if the grantee allocates \$2,000,000 in capital and receives a matching state grant of \$2,000,000, the grantee must write property insurance in Louisiana with net premiums of at least \$8,000,000.

B. To comply with the requirements of the grant, new property insurance written by the grantee shall be residential, commercial, mono-line, or package property insurance policies in this state and shall include coverage for wind and hail with limits equal to the limits provided for other perils insured under such policies.

C. The net written premium requirements of this Section shall be satisfied only by new property insurance coverages reported on the Annual Statement State Page filed with the department under lines 1 (Fire), 2.1 (Allied Lines), 3 (Farmowners), 4 (Homeowners), or 5.1 (Commercial Multi-peril Non-liability).

D. Grantees shall also comply with the following.

1. In the first 24 months after receipt of matching capital fund grants, the grantee shall write at least 50 percent of the net written premiums for policyholders whose insured property is located in the parishes listed in §18917.B.3. The grantee shall maintain this net written premium ratio over five years to fully earn the matching capital fund grant in accordance with R.S. 22:2370 unless an extension has been granted by the commissioner under R.S. 22:2370.B or §18929.C of Regulation 125.

2. The net written premium ratio of §18923.D.1 applies only to the net minimum premium required under §18923.A. Thus, the grantee may write additional Louisiana property coverage without regard to the ratio required by §18923.D.1.

E. The requirements of the grant that must be satisfied by the grantee are illustrated by the following example assuming a grant of \$2,000,000.

1. Example

a. The grantee is awarded a \$2,000,000 grant. Within 10 days of receipt of the grant of Incentive Program Funds, the grantee must match the grant with newly allocated capital funds of at least \$2,000,000 and provide written certification of compliance to the department. In the first 24 months after receipt of the grant, the grantee must write property insurance in Louisiana with net written premiums of at least \$8,000,000. In the first 24 months after receipt of the grant, the grantee must write at least \$4,000,000 of the net written premiums for policyholders whose insured property is located in the parishes listed in §18917.B.3. Grantees shall maintain this net written premium ratio over five years to fully earn the matching capital fund grant in accordance with R.S. 22:2370. Compliance with the requirements for the second year and for each succeeding year must be demonstrated on the grantee's annual reports.

F. Grantees shall also satisfy the requirements for licensing, form filings, rate filings, and any other applicable provisions contained in Title 22.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§18925. Funding Schedule

A. Unless expedited funding is requested by the grantee and authorized by the commissioner, a grant that has been fully approved shall be funded on the next regular quarterly period thereafter, i.e., January 1, April 1, July 1, or October 1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§18927. Reporting Requirements

A. Grantee shall segregate and report any grants received on the line titled "Aggregate Write-In for Special Surplus Funds" in the NAIC Annual and Quarterly Statement Blanks.

B. Grantee shall report annually by March 1 and quarterly by May 15, August 15, and November 15 of each year on a form acceptable to the commissioner the following information for the preceding year and quarter ends:

1. the amount of premium written by parish under the Incentive Program;

2. the amount of premium by parish associated with properties located in the parishes listed in §18917.B.3.

3. the amount of premium by parish taken-out from the Louisiana Citizens Property Insurance Corporation.

4. the amount of premium by parish, including and in addition to that written under the Incentive Program.

C. Grantee shall report annually by June 1, detail on the catastrophe reinsurance program maintained, including retentions, limits, reinstatements, as well as the current ratings of each reinsurer. In addition, the report shall contain the modeled Probable Maximum Loss for a 1 in 50, 1 in 100, 1 in 150, 1 in 200 and 1 in 250 event, including the models and versions utilized.

D. Grantee shall report quarterly by May 15, August 15, and November 15 risk-based capital for the preceding quarter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§18929. Compliance

A. The commissioner shall conduct an examination under R.S. 22:1981, financial analysis under R.S. 22:1984 and/or investigation annually, or more often as the commissioner deems necessary to determine the grantee's compliance with the requirements of the grant, as per R.S. 22:2361 et seq., and Regulation 125. In addition to the requirements of R.S. 22:2361 et seq., the department may require such reports and/or conduct such examinations, financial analysis or investigations as the commissioner

deems necessary to verify compliance with the property insurance requirements set forth in the Incentive Program and Regulation 125.

B. If the commissioner determines that a grantee has complied with the terms of the grant, the commissioner shall notify the grantee in writing that the grantee has earned the 20 percent portion of the grant pursuant to R.S. 22:2370.

C. If the commissioner determines that the grantee shows promise of future compliance, the commissioner may grant an extension of not more than one year to a grantee who has failed to satisfy all requirements of the grant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§18931. Earned Capital

A. A grantee who has received a grant is entitled to earn the grant at the rate of 20 percent per earning period for the last 12 months of that earning period in which the grantee is in compliance with the requirements of R.S. 22:2361 et seq., and Regulation 125, such that the grantee may earn the entire grant after five years of full compliance with the requirements.

B. The grantee may begin to earn the grant from the reporting period in which the grantee first demonstrates that its net written premiums have reached compliance with all requirements of §18923.D.1. The grantee will earn 20 percent of the grant in each 12-month period thereafter in which the grantee demonstrates that it has maintained compliance with all requirements for net written premiums. Thus, if in compliance with §18923.D.1, the grantee may begin to earn the grant at the end of the first year.

C. Upon verification of the net written premium requirements during the preceding 12 months, the commissioner will issue written declaration that the grantee has earned 20 percent of the grant or a pro rata share thereof awarded to the grantee. No funds may be earned by the grantee until it receives official notification from the commissioner.

D. If the grantee does not meet the grant requirements during any year but shows promise of future compliance based on good cause having been demonstrated, the commissioner may extend the period of time from five years in order for the grantee to earn the entire grant. The extension may be granted for up to one year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

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

§18933. Declaration of Default

A. The commissioner may declare a grantee in default of the requirements for a grant should it be found that any of the following exists:

1. The grantee fails at any time to meet the specific minimum requirements of §18915.A.1-4. The commissioner may take into consideration the effects of the Incentive Program, including efforts demonstrated by the grantee, when monitoring compliance with this criteria.

2. The grantee fails to maintain a certificate of authority for the line or lines of insurance written pursuant to the grant program.

3. The grantee fails to meet the specific requirements of §18923.

4. The grantee fails to comply with any other applicable provisions of R.S. 22:2361 et seq., or Regulation 125.

B. If the commissioner determines that the grantee is in default, the commissioner shall notify the grantee in writing of such default. Any grantee declared in default by the commissioner shall have 30 days from the date of the declaration of default to request reconsideration by the commissioner. The written request for reconsideration shall set forth, in detail, each and every reason why the grantee is entitled to the relief requested, including any documents tendered in support thereof. The commissioner shall have 30 days from the mailing of the request for reconsideration to review it and render a decision. The commissioner's decision upon reconsideration may be appealed to the division of administrative law in accordance with R.S. 22:2191 *et seq.* Unless modified on reconsideration or appeal, the default is effective from the date of the original declaration, and the grantee shall not be eligible to continue its participation in the Incentive Program unless the default is for failure to meet the requirements referenced in §18933.A.3.

C. The grantee in default is liable for and shall repay all grant funds that have not been earned by the grantee, plus legal interest as defined in R.S. 13:4202(B) from the date of the commissioner's default declaration. In the event of default, a portion of the grant award for the current year may be earned on a pro rata basis to give credit for premiums written under the Incentive Program. Repayment on a pro rata basis shall be determined using a method prescribed by the commissioner. If a request for reconsideration is not timely made, repayment is due upon the expiration of 30 days from the declaration of default. If a request for reconsideration is timely made and denied, repayment is due within 10 days of the denial of the reconsideration request.

D.1. In determining the pro rata earnings, the commissioner shall divide the actual amount of written premiums by the amount required to be written under the Incentive Program, in each of the following categories:

- a. policyholders whose insured property is located in the parishes listed in §18917.B.3; and
- b. the total amount of net premiums written by the grantee under the Incentive Program.

2. Each category is weighted equally at 50 percent, and credit shall be given based on the percentage of premiums written per category. The resulting factor is then multiplied by 50 percent of the amount the grantee is entitled to earn per category for each year of compliance under the Incentive Program (earned capital). The factor shall not exceed 1.00 for additional writings in any category. The sum of all categories shall equal the pro rata amount earned by the grantee.

E. The requirements for earning on a pro rata basis are illustrated by the following example assuming a grant of \$5,000,000, presuming a maximum earned capital of \$1,000,000 (20 percent per year entitlement assuming full compliance), and the grantee is declared in default.

Example: [The required amounts of premium for each of the two categories are listed in the table below under "Requirement." Each requirement equates to 50% of the earned capital for the earning period or \$500,000. The

“Actual” column represents the actual amount of writings by the grantee. The “Factor” column is the actual amount of writings divided by the requirement in each category. The “Earned” column represents the factor multiplied by \$500,000. Thus, under this example, the amount of money earned by the grantee on a pro rata basis is \$775,000.]

Category	Requirement	Weight	Actual	Factor	Earned
Total Net Written Premium	\$20,000,000	50 percent	\$15,000,000	.75	\$375,000
Parishes listed in §18917.B.3	\$10,000,000	50 percent	\$8,000,000	.80	\$400,000
				Total:	\$775,000

F. The commissioner may institute legal action to recover all sums due by the grantee in default in the Nineteenth Judicial District Court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§18935. Cooperative Endeavor Agreements

A. In furtherance of R.S. 22:2361 et seq., and in accordance with R.S. 22:2363.A, the grantee shall execute a cooperative endeavor agreement with and in a form prescribed by the commissioner subject to approval by the Office of State Procurement of the Division of Administration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§18937. Severability

A. If any provision of Regulation 125 or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of Regulation 125 that can be given effect without the invalid provision or application, and to that end, the provisions of Regulation 125 are severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

§18939. Confidentiality

A. Any and all records, documents and information associated with the Incentive Program that are deemed confidential or privileged pursuant to R.S. 44:1 et seq, Title 22 or any state or federal law will remain confidential or privileged.

§18941. Effective Date

A. This regulation shall become effective upon final publication in the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:2361 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:

Family Impact Statement

1. Describe the Effect of the Proposed Regulation on the Stability of the Family. The proposed 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 regulation should have no impact upon the rights and authority of parents regarding the education and supervision of their children.

3. Describe the Effect of the Proposed Regulation on the Functioning of the Family. The proposed 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 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 regulation should have no impact upon the behavior and personal responsibility of children.

6. 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 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.

Poverty Impact Statement

1. Describe the Effect on Household Income, Assets, and Financial Security. The proposed 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 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 regulation should have no effect on employment and workforce development.

4. Describe the Effect on Taxes and Tax Credits. The proposed 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 regulation should have no effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance.

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 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 regulation should have no measurable impact upon small businesses.

3. A Statement of the Probable Effect on Impacted Small Businesses. The proposed 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 regulation should have no measurable impact on small businesses; therefore, will have no less intrusive or less cost alternative methods.

Provider Impact Statement

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

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

Public Comments

Interested persons who wish to make comments may do so by writing to Jennifer Land, 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., December 12, 2022.

James J. Donelon
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Regulation 125 Insure Louisiana Incentive Program

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

The proposed rule is not anticipated to result in implementation costs or savings to the state or local governmental units. The proposed rule is being promulgated to establish the rules and regulations of the Insure Louisiana Incentive Program which was enacted through the passage of Act 754 of the 2022 Regular Session of the Louisiana Legislature. The rule will set forth standards and procedures relative to a property insurer's participation in the Insure Louisiana Incentive Program. The Insure Louisiana Incentive Program is a state match program for property insurers who commit to writing new business in Louisiana. The Commissioner may grant matching capital funds to qualified property insurers. The level of matching grant monies provided by the state is contingent upon the amount appropriated by the legislature.

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

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

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

The proposed rule is anticipated to benefit Louisiana property owners with the current crisis in the availability and affordability of residential and commercial property insurance. The proposed rule outlines rules and regulations of the Insure Louisiana Incentive Program which was enacted by the legislature for the purpose of economic development and stability in Louisiana. The program encourages additional property insurers to participate in the voluntary property insurance market in Louisiana.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The program anticipates increasing the availability of property insurance, increasing competitive pressure on insurance rates, and reducing the volume of business written by the Louisiana Citizens Property Insurance Corporation.

Denise Gardner
Chief of Staff
2211#032

Alan M. Boxberger
Interim Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue Policy Services Division

Articles and Products Made of Tobacco and Tobacco Substitutes (LAC 61.I.5105)

Under the authority of R.S. 47:841(D) and 1511, and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61.I.5105 relative to products made with nicotine extract or synthetic nicotine and tobacco substitutes.

The purpose of this proposed regulation is to provide guidance regarding the taxability of products made with nicotine extract or synthetic nicotine and tobacco substitutes. The proposed regulation provides guidance by clarifying the phrases, "articles and products made of tobacco" and "tobacco substitute" used in the definition of smokeless tobacco provided in Louisiana Revised Statute 47:842(15). The proposed regulation reflects current policy of the Department of Revenue.

Title 61 REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 51. Tobacco Tax

§5105. Articles and Products Made of Tobacco and Tobacco Substitutes

A. The definition of *smokeless tobacco* provided in R.S. 47:842(15) includes articles and products made of tobacco and tobacco substitutes.

B. Any product made with nicotine which is extracted from tobacco is considered an article or product made of tobacco. It is not necessary that tobacco leaves be present in the article or product. These products are smokeless tobacco for purposes of Louisiana tobacco tax.

C. As used in R.S. 47:842(15), for purposes of the tax due on smokeless tobacco, tobacco substitute includes any non-combustible product intended to be used or consumed as an alternative to tobacco. Examples of tobacco substitutes include, but are not limited to products made with nicotine