

APA-1
03/11

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control No. Department or Agency

Rule No.

Rule Title:

New Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety?

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare?

Is there another, less restrictive method of regulation available that could adequately protect the public?

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule?

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public?

Does the proposed rule have an economic impact?

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of Certifying Officer 

Date

(DATE FILED)
(STAMP)

Alabama Department of Industrial Relations
Workers' Compensation Division

NOTICE OF INTENDED ACTION

AGENCY NAME: Department of Industrial Relations

RULE NO. & TITLE: 480-5-3-.08 Group Self Insurance-Operation of Funds

INTENDED ACTION: Amend Rule 480-5-3-.08

SUBSTANCE OF PROPOSED ACTION:

Amends rule to reflect minimum investment standards; also amends rule to limit a participant from changing group funds while there are outstanding contributions owed.

TIME, PLACE, MANNER OF PRESENTING VIEWS:

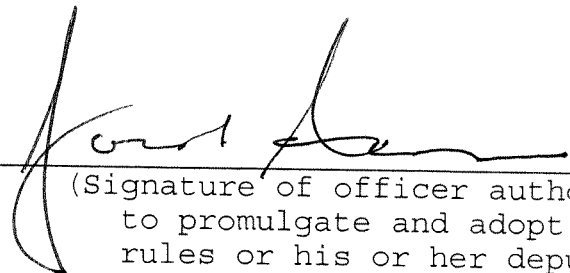
Written or oral comments may be submitted to the Department of Industrial Relations, Workers Compensation Division, 649 Monroe Street, Montgomery, AL 36131, (800) 528-5166. Business hours are 8:00 a.m. to 5:00 p.m., Monday-Friday. Deadline submissions is June 8, 2012.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Written/Oral comments must be received by the Department no later than June 8, 2012.

CONTACT PERSON AT AGENCY:

Charles DeLamar or Steve Garrett,
(800) 528-5166/Charles.delamar@dir.alabama.gov


(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

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RULE

Division: Workers' Compensation
Chapter: General
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480-5-3-.08 Operation Of Funds.

(1) Administrator - The Trustees of a Fund shall appoint an Administrator. The Administrator shall perform duties as prescribed by the Trustees. The Administrator may be an employee of the Fund or the Sponsoring Association but shall not be an employee of the Fund's Service Company.

(2) Minimum Annual Contribution - No Fund shall operate unless the sum of its Participants' annual contributions is at least one million dollars (\$1,000,000.00).

(3) Excess Insurance - All Funds are required to obtain specific excess insurance. Funds may obtain aggregate excess insurance.

(4) Minimum Claims Fund - No less than seventy-five percent (75%) of the earned and collected contributions shall be set aside each Fund year as a Fund's Claims Fund.

(5) Minimum Surety Requirements - A Fund shall post with the Director minimum surety in any form or amount approved by the Director but in no event less than two hundred thousand dollars (\$200,000.00). This surety shall stand in the name of the Director who shall be authorized to sell and/or collect in case of default of the Fund such amount thereof as shall yield sufficient funds to pay outstanding liabilities of the Fund.

(6) Joint and Several Liability - All participants shall sign Participation Agreements providing for joint and several liability for claims against the Fund during the coverage periods of their participation.

(7) Financial Reports -

(a) Each Fund shall maintain its financial records on a current basis. A "current basis" is generally considered as the maintenance of financial records in a manner that would allow the Fund to file accurate quarterly and annual reports as herein

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required and make any disbursements or file any reports as may be required by the state or federal governments.

(b) Every Fund shall have an annual audit performed by an independent certified public accountant. The certified public accountant shall prepare an annual financial statement based on the audit. The financial statement shall be presented using generally accepted accounting principles (GAAP), statutory accounting principles (SAP) or governmental accounting ~~principals~~ principles in the case of government funds. The financial statement shall be filed with the Director within six months from the end of the Fund fiscal year unless an extension is granted in writing by the Director.

(c) Each Fund shall file with the Director a quarterly claims status report and a quarterly financial statement prepared according to statutory accounting principles, generally accepted accounting principles or governmental accounting principles in the case of government funds which reflects the financial condition of each open Fund year. The report shall be filed within forty-five (45) days after the close of each quarter and shall be signed by the Administrator. These reports may be completed by the certified public accountant, in-house personnel or the Fund's Service Company. For good cause shown, the Director may grant an extension of time.

(d) Loss reserve discounting - Present value discounting of workers' compensation loss reserves shall be permitted. Loss reserves shall not be discounted in an amount greater than that amount allowed by the Internal Revenue Service.

(e) In addition to the reporting requirements in subsections (b) and (c) of this section, the Fund's certified public accountant shall:

1. Report, in writing, within five (5) business days to the Fund's Administrator and the Director any determination that the Fund has intentionally misstated its financial condition by a material amount.

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2. Report, in writing, to the Fund's Administrator and the Director any facts which have come to his knowledge after the filing of the annual financial statement which might have affected the statement.

3. Furnish the Fund's Board of Trustees a written report describing significant deficiencies in the Fund's internal control structure. The Board of Trustees shall submit a copy of the report and their response to the Director.

(f) Each Fund shall make a copy of its most recent annual financial statement available to all Participants upon request. This requirement may be satisfied by making available to all Participants an extract of the statement in a form approved by the Director.

(8) Actuarial Report - Each Fund shall have an evaluation performed annually by an Actuary. The actuary shall issue an opinion of this evaluation in compliance with actuarial standards, and in accordance with item 7(b) of this rule.

(9) Bylaws and Trust Agreement - Each Fund shall have a set of Bylaws or shall enter into a trust agreement which shall govern the operation of the Fund. The Bylaws or trust agreement shall contain but not be limited to the following: qualifications for Fund membership; underwriting considerations; the qualifications, method of selection, term of office and quorum for the Board of Trustees; method of amending the Bylaws or trust agreement; the amount of the Board of Trustees' remuneration which is in excess of actual expenses incurred; provisions acknowledging the joint and several liability of each Fund Participant, and the policy regarding dividends.

(10) Contract with Approved Service Company - All funds are required to enter into a written contract with an approved Service Company. The contract is to provide that the Service Company is responsible for administering all claims incurred during the period of the contract until their final conclusion according to law.

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(11) Investments - The trustees may invest funds not currently required for Fund obligations in the following:

(a) Securities such as Bills, Notes or Bonds which are issued or guaranteed by the United States Government, its agencies or instrumentalities.

(b) Savings accounts and certificates of deposits in commercial banks duly chartered within the State of Alabama and a member of the Federal Deposit Insurance Corporation.

(c) Share accounts or savings certificates in a savings & loan association duly chartered within the State of Alabama and a member of the Federal Savings and Loan Insurance Corporation Savings Associations Insurance Fund.

(d) Corporate bonds rated A Baa or better by Moody's Investors Service or BBB by Standard and Poors.

(e) Prime (A-1 or P-1) commercial paper rated A-2 or better by Standard and Poors, or P-2 or better by Moody's Investors Service.

(f) Repurchase agreements - A repurchase agreement is a fully secured investment in that it is an actual purchase of securities with agreement to sell back to the original holder of securities at a later date.

(g) Money market securities or mutual funds investing in such securities as described in this section.

(h) Up to fifteen percent (15%) of the total portfolio value may be invested in common stocks having a market capitalization of at least \$100 million and listed on a national Exchange or NASDAQ.

(i) Tax-free insured municipal bonds.

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(j) Such other investments as the Director may authorize in advance in writing.

(12) Investment Advisors - All Funds are authorized but not required to utilize the services of a registered investment advisor.

(13) Rates and Rating Plans

(a) Promulgation of Contribution Rates - The Trustees of a Fund shall establish annually contribution rates to be assessed against each Participant based upon employee classifications. The rates must be submitted to the Department on or before October first (1st) of each year. The rates shall be determined by one of the following methods and approved by the Director:

1. The most current Workers' compensation "NCCI assigned risk" rates approved by the Alabama Department of Insurance less any surcharge.

2. The most current "Loss-costs" rates by code classification approved by the Alabama Department of Insurance plus allocated expenses or overhead.

3. Actuarially determined rates based on claims history by classification for a particular Fund.

(b) Rates based on "Deductible" plans may be offered Participants if approved by the Director and, if required, by the Fund's excess insurance or reinsurance carrier.

(c) A retrospectively rated plan may be offered Participants if approved by the Director.

(d) All Funds shall use the uniform experience modification formula determined by the Director.

(e) Any discounts from these rates shall be approved by the Director.

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(14) Names, Addresses and GSI Numbers of Fund Participants - All Funds shall maintain an accurate list of the names, addresses and GSI Numbers of Participants by Fund year. The list shall be provided to the Director within thirty (30) days after the beginning of each Fund year.

(15) Participant Application - All Funds shall provide to the Director a copy of the Participant Application of a new Participant within thirty (30) days after acceptance for participation in the Fund. Any application received by the Department after the thirty days, must be accompanied by an explanation.

(16) Participation Agreement - All Funds shall provide to the Director a copy of the Participation Agreement of a new Participant within thirty (30) days after acceptance for participation in the Fund.

(17) Eligibility of Participants - A Fund Participant shall not be eligible to participate in another fund until the Department has been notified of (a) the termination of participation in the original fund; and (b) that there is no outstanding balance of contributions owed to the original fund.

(18) Change of Participant Legal Status - All Funds shall require any Participant which changes its legal status (i.e. sole proprietor to corporation) to complete a new Participation Application and execute a new Participation Agreement.

(19) Non-renewed or Terminated Participants - All Funds shall provide the Director a list indicating the names, addresses and GSI Numbers of non-renewed Participants within thirty (30) days after the beginning of a Fund year. All Funds shall provide the Director the names and addresses of any terminated Fund Participant and the reasons for the termination within thirty (30) days after termination.

(20) Participants with Common Ownership - Participants having a common ownership but which operate under different trade names must maintain separate participation and be assigned individual

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participant identification, provided, however, a corporation with divisions operating under different trade names may, if requested by the Fund, be assigned one individual participant identification.

(21) Forms Prescribed by Department - All applications, participation agreements, notices, and lists required under these rules and regulations to be provided the Department shall be in the form prescribed by the Department.

(22) Confidentiality of Records - All approved Funds' financial and administrative records on file with the Department are proprietary material and therefore private and confidential and not open to public inspection.

(23) Distribution of Excess Funds and Investment Earnings

(a) Any Funds in excess of the amount necessary to fulfill all obligations under the law remaining in a claims Fund may be distributed to Fund Participants at the discretion of the Trustees. Such distribution must be authorized in advance by the Director.

(b) Investment earnings or any other funds not set aside as a part of the Claims Fund may be distributed to members at the discretion of the Trustees. Such distribution must be authorized in advance by the Director.

Author: Wilbon S. Spates, Chief, Workers' Compensation Division

Statutory Authority: Code of Ala. 1975, §25-2-2(6).

History: New Rule: ~~Filed October 9, 1997; effective November 13, 1997.~~ Filed _____, 2012; effective _____, 2012.