

# ARKANSAS REGISTER

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## Transmittal Sheet



W.J. "BILL" McCUEN  
SECRETARY OF STATE  
LITTLE ROCK, ARKANSAS

W. J. "Bill" McCuen  
Secretary of State  
State Capitol Rm. 010  
Little Rock, Arkansas 72201-1094

For Office Use Only: Effective Date 2/07/92 Code Number 054.00.92-004

Name of Agency ARKANSAS INSURANCE DEPARTMENT

Department Legal Division

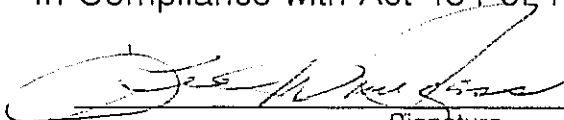
Contact Person Steve Uhrynowycz

Statutory Authority for Promulgating Rules Act 561 of 1991; Ark. Code Ann. §§23-61-108, 23-67-119, 23-79-109, 25-15-201, et seq.

Intended Effective Date		Date
<input type="checkbox"/> Emergency	Legal Notice Published . . . . .	<u>11-13-91</u>
<input type="checkbox"/> 20 Days After Filing	Final Date for Public Comment . . . . .	<u>12-20-91</u>
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	Adopted by State Agency . . . . .	<u>1-17-92</u>

### CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted  
In Compliance with Act 434 of 1967 As Amended.

  
\_\_\_\_\_  
Signature

Insurance Commissioner  
\_\_\_\_\_  
Title

January 22, 1992  
\_\_\_\_\_  
Date

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W.J. "BILL" McQUEEN  
SECRETARY OF STATE  
LITTLE ROCK, ARKANSAS  
BY \_\_\_\_\_

RULE AND REGULATION 54

ARKANSAS WORKERS' COMPENSATION INSURANCE PLAN

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SECTION 1. AUTHORITY

This Rule and Regulation is adopted and promulgated by the Insurance Commissioner for the State of Arkansas ("Commissioner") pursuant to the authority vested in the Commissioner by Act 561 of 1991, codified as Arkansas Code Annotated §§ 23-67-201, et seq., and by Arkansas Code Annotated §§ 23-61-108, 23-67-119, 23-79-109 and 25-15-201, et seq.

SECTION 2. PURPOSE

The purpose of this Rule and Regulation is to establish a mandatory workers' compensation insurance plan to assure coverage for employers who are in good faith entitled, but unable to procure, workers' compensation insurance in the State of Arkansas and to provide for the operation and regulation of the workers' compensation insurance plan.

SECTION 3. EFFECTIVE DATE

This Rule and Regulation shall be effective February 1, 1992 for new policies issued through the Arkansas Workers' Compensation Insurance Plan, and for renewal policies issued through the Arkansas Workers' Compensation Insurance Plan with an effective date of February 1, 1992 and subsequent thereto.

SECTION 4. DEFINITIONS

- A. "Commissioner" shall mean the Insurance Commissioner for the State of Arkansas.
- B. "Plan" shall mean the Arkansas Workers' Compensation Insurance Plan.
- C. "Council" shall mean the National Council on Compensation Insurance.
- D. "Agent" shall mean a person properly licensed to sell workers' compensation insurance in the State of Arkansas.
- E. "Employer" shall mean an entity which is applying for or has obtained a policy issued through the Plan.
- F. "Carrier" shall mean an insurer authorized to write workers' compensation insurance in the State of Arkansas, and who has qualified to transact workers' compensation insurance pursuant to Arkansas Code Annotated §11-9-302(a).
- G. "Servicing Carrier" shall mean one of the carriers approved by the Commissioner to which administration of a policy issued through the Plan may be assigned by the Council.
- H. "Assigned Carrier" shall mean the servicing carrier which the Council has determined shall provide coverage to an employer applying for an assignment.
- I. "Voluntary Offer of Coverage" shall mean an offer from a carrier to an employer to provide any and all commercial insurance coverage requested by the employer, including workers' compensation insurance coverage, in the voluntary market utilizing any rating plan approved for use in the State of Arkansas by the Commissioner for that carrier.

SECTION 5. ADMINISTRATION OF PLAN

A. The Commissioner hereby designates the National Council on Compensation Insurance ("Council") to administer and operate the Plan. The Council shall file with the Commissioner for approval operating rules, procedures and guidelines consistent with the provisions of this Rule and Regulation for the administration and operation of the Plan.

1) The operating rules, procedures and guidelines for the administration and operation of the Plan may include provision for one or more carriers to be designated servicing carriers to issue and service workers' compensation policies written through the Plan.

B. The Council shall also file with the Commissioner for approval all policy forms, endorsements, rules, rates or supplementary rate information necessary to effectuate the Plan.

C. The Council shall publish and make available to all carriers and agents the operating rules, procedures and guidelines for the administration and operation of the Plan.

D. The Council shall monitor servicing carrier compliance with the requirements of Section 12 of this Rule and Regulation. The Council shall file with the Commissioner on or before January 31, 1993, and on or before January 31 of each year thereafter, the self-audit reports prepared by each servicing carrier regarding such compliance for the preceding calendar year.

The Council shall perform physical audits of servicing carriers to monitor their compliance with the requirements of Section 12 of this Rule and Regulation as directed by the Commissioner, but not less frequently than every three years. The Council shall file with the Commissioner physical audit reports within thirty (30) days of the Council's completion of the report.

#### SECTION 6. PARTICIPATION IN PLAN

All carriers shall participate in the equitable apportionment among them of risks eligible for the Plan. Participation in the Plan expenses, profits and losses shall be in the proportion that the carrier's net direct voluntary market workers' compensation insurance premiums written in the State of Arkansas during the preceding calendar year bears to the aggregate net direct voluntary market workers' compensation insurance premiums of all carriers written in the State of Arkansas during the preceding calendar year.

#### SECTION 7. ELIGIBILITY FOR PLAN

A. Any employer required to secure the payment of workers' compensation pursuant to Arkansas Code Annotated §11-9-404(a)(1) shall be entitled to workers' compensation insurance through the Plan, provided:

- 1) Within sixty (60) days preceding the date of application, the employer must have applied for workers' compensation insurance and been rejected by at least two (2) carriers, specifically including, where applicable, the carrier providing coverage to the employer at the time of application;
- 2) Within sixty (60) days preceding the date of application, the employer must not have rejected a voluntary offer of coverage from a carrier; and
- 3) The employer complies with the requirements of Section 8 and Section 10 of this Rule and Regulation in applying for workers' compensation insurance through the Plan.

B. Any employer eligible to obtain workers' compensation insurance through the Plan, as provided in Subsection (A) of this Section must also in good faith be entitled to such insurance. Good faith is presumed in the absence of clear and convincing evidence to the contrary. An employer is not in good faith entitled to insurance through the Plan if, at the time of application or thereafter, any of the following circumstances exist:

- 1) If, at the time of application, a self-insured employer is aware of pending bankruptcy proceedings, insolvency, cessation of operations, or conditions that would probably result in occupational disease or cumulative injury claims from exposures incurred while the employer was self-insured;
- 2) The employer has failed or refused to comply with all effective laws, orders, rules or regulations made by public authorities relating to the welfare, health and safety of employees;
- 3) The employer or an enterprise with a common managing interest has an outstanding premium obligation for previous workers' compensation insurance; or
- 4) The employer, its representative and/or agent knowingly makes a material misrepresentation on the application for insurance by omission or otherwise.

#### SECTION 8. PROCEDURE FOR APPLICATION

A. The employer, its representative and/or agent shall file a completed application in duplicate with the Council on a form prescribed by the Council. The application must be substantially completed, based upon information reasonably available to the employer and the agent, prior to its submission to the Council.

B. The employer shall include as part of the application a copy of its latest filed Federal Employer Form 940, 941, 941E, 942 or 943, or one of the following: an equivalent Federal- or State-required verifiable current payroll record, such as an unemployment wage report; payroll information included in a certified profit and loss statement; or an employer generated profit and loss statement with a notarized explanation why the employer is unable to provide a verifiable payroll record. If the employer is a new business without prior payroll, the employer shall provide a notarized statement explaining the lack of verifiable payroll records.

C. The employer, its representative and/or agent shall forward with the application and payroll verification an agency check, a certified check or a cashier's check payable to the National Council on Compensation Insurance - Southern Division for the estimated annual or deposit premium, as determined after contacting the Council prior to submission of the application for a quotation for the estimated annual premium. The amount of deposit premium payable shall be as provided in Section 10 (B).

#### SECTION 9. BINDING COVERAGE, ASSIGNMENTS AND POLICY ISSUE

A. The Council will not bind coverage if the application is not substantially complete; if payroll verification is not included; or if a check for the estimated annual or deposit premium is not included with the application. Upon determination that an application is deficient, the Council shall immediately advise the party submitting the application by telephone that the application is deficient, and shall further advise the party submitting the

application as to what action is necessary to cure the deficiency. If such deficiency has not been cured within seventy-two (72) hours, the Council shall return all materials including the check to the submitting party with an explanation of the rejection. Coverage shall not be considered bound on deficient or rejected applications.

B. Coverage may be bound under the Plan, for applications submitted as provided in Section 8, in accordance with the following procedures:

1) For all risks, other than those formerly self-insured, coverage will be bound either at 12:01 a.m. on the first day following the United States Postal Service postmark time and date on the envelope in which the application materials are mailed, or at the expiration of existing coverage, whichever is later.

(a) If there should be no United States Postal Service postmark, coverage will be effective at 12:01 a.m. of the date of receipt by the Council, unless a later date is requested.

(b) Application materials hand delivered to the Council will be effective at 12:01 a.m. on the date following receipt by the Council, unless a later date is requested.

2) For risks formerly self-insured, coverage will be bound either at 12:01 a.m. not later than sixty (60) days following the United States Postal Service postmark time and date on the envelope in which the application materials are mailed, or at the expiration of existing coverage, whichever is later.

(a) If there should be no United States Postal Service postmark, coverage will be effective at 12:01 a.m. not later than sixty (60) days following the date of receipt by the Council, unless a later date is requested.

C. If coverage is bound pursuant to Subsection (B) of this Section, the Council shall immediately issue a thirty-day (30) binder in the name of the assigned carrier with copies to the employer, agent and assigned carrier.

D. All assignments under the Plan are to be made on an intra-state basis. Distribution of assignments among the servicing carriers shall be made in proportion to each servicing carrier's share of the total net direct voluntary market workers' compensation and employers' liability premium written in the State of Arkansas during the preceding calendar year, so far as is practicable.

E. Prior to the expiration of the binder issued under Subsection (C), the assigned carrier shall issue and deliver a policy of insurance to the employer and forward a copy of the policy to the agent. The policy shall be issued for a term of at least one year, unless a shorter term has been requested. A copy of the policy declarations and all endorsements must be filed with the Council and forwarded to the agent. The assigned carrier shall stamp "ARK WCIP" on all policies, policy declarations and endorsements.

F. Any carrier who wishes to insure an employer as direct business in the voluntary market may do so at any time. If such carrier is not the assigned

carrier, the assigned carrier shall cancel its coverage pro rata, and the assignment shall automatically terminate as of the effective date of the new carrier's insurance policy.

G. Any employer desiring workers' compensation insurance for operations in states other than those covered by his assigned carrier may request that the Council make available such insurance in such additional states. Plan policies affording coverage on operations in more than one state must clearly indicate the premium developed for each state separately.

SECTION 10. PLAN RATES

A. All insurance under the Plan shall be written in accordance with the classifications, rates and rating plans established by the Council and approved by the Commissioner, except as provided herein. In order to depopulate the Plan, to reduce the residual market burden of carriers and to stimulate activity in the voluntary market, the following rates and rating plans shall be utilized in writing insurance through the Plan:

- 1) A rate differential over the voluntary market rate, based on Plan losses or deficit, shall be included for all policies issued through the Plan.
- 2) Premium discounts or credits shall not be available for policies issued through the Plan.
- 3) Such other rates and rating plans consistent with the objectives set out herein which are filed by the Council and approved by the Commissioner for use in the Plan.

B. In order to depopulate the Plan and reduce the amount of uncollected premium, the minimum deposit premium required to be submitted with an application for coverage through the Plan is as follows:

<u>Estimated Annual Premium</u>	<u>Payment Basis</u>	<u>Minimum Deposit Premium</u>	<u>Additional Payments During Year</u>
Less than \$5,000	Annual	100% of Annual	None
\$5,000 to \$9,999	Semi-annual	75% of Annual	One
\$10,000 to \$49,999	Quarterly	50% of Annual	Three
Greater than \$50,000	Monthly	25% of Annual	Six

All additional payments shall be equal payments, the sum of which, when added to the deposit premium, shall equal one hundred percent (100%) of the estimated annual premium. All payments are subject to adjustment at final audit. Nothing herein shall be construed to prohibit an employer from paying a deposit premium greater than the minimum set out above at application.

SECTION 11. CANCELLATION AND RENEWAL

A. An assigned carrier shall have the right to cancel any binder issued by the Council, or any policy it has issued under the Plan:

- 1) Where the employer is not eligible for the Plan as provided in Section 7 of this Rule and Regulation;
- 2) Where the employer has not paid premiums due the assigned carrier for coverage under the Plan;
- 3) Where the employer refuses to implement reasonable health, safety or loss control recommendations of the assigned carrier;
- 4) Where the employer refuses to allow the assigned carrier reasonable access to its facilities for audit or inspection; or
- 5) Where the employer refuses to disclose to the assigned carrier the full nature and scope of the assigned carrier's exposure.

The assigned carrier shall proceed according to Ark. Code Ann. §11-9-408(b) in cancelling any binder or policy issued under the Plan.

B. At least forty-five (45) days prior to the expiration date of a policy issued under the Plan, the assigned carrier shall notify the employer and the agent, in writing and forwarding the Council a copy, of the impending expiration and instruct the employer to request the assigned carrier to renew, provided the employer continues to be eligible for coverage under the Plan. The assigned carrier must forward to the employer, with a copy to the agent, the renewal proposal with a copy of such proposal to the Council. Within thirty (30) days after receipt of the estimated annual or minimum deposit premium, the assigned carrier shall issue a policy properly stamped "ARK WCIP" to the employer and furnish a copy of the renewal information page to the Council and to the agent. The renewal policy shall be effective upon expiration of the current policy, or as provided in Section 9 (B)(1), whichever is later.

C. An assigned carrier unwilling to renew a policy assigned to it shall notify in writing the employer, the agent and the Council at least forty-five (45) days prior to the expiration date of the policy. The assigned carrier shall state the reason(s) that it is unwilling to renew the policy.

D. An employer dissatisfied with its assigned carrier may request reassignment by forwarding to the Council application materials specified in Section 8 of this Rule and Regulation along with reason(s) the employer requests reassignment at least forty-five (45) days prior to the expiration date of the policy.

## SECTION 12. SERVICING CARRIER STANDARDS

In addition to the standards specified in this Rule and Regulation and such other standards developed by the Council, servicing carriers shall meet the following minimum standards, when assigned to provide coverage under the Plan to an employer:



A. Servicing carriers receiving assignments shall provide a high quality of service to the employer, at a level equal to that provided to similar risks in the voluntary market. Any services necessary because of regulatory or statutory requirements shall be required to be provided and are hereby incorporated into these standards. Servicing carriers shall deal with agents at the same level of efficiency and with the same degree of courtesy as they do with agents with whom they have a direct contractual relationship. Servicing carriers shall provide agents with copies of all written communications and documents forwarded to employers.

B. Servicing carriers shall issue endorsements requested by the employer within thirty (30) days after receipt of the request.

1) When a servicing carrier determines that additional premium or other endorsement is necessary, it must issue such endorsement within sixty (60) days of making the determination. Premium endorsements issued after the expiration date of the policy shall be issued in accordance with Subsection (G) of this Section.

C. Servicing carriers shall verify an employer's payroll and classification(s) through interim audit or comparable means where the servicing carrier has reason to question the accuracy of either or both. Servicing carriers shall consider the effects of inflation and employment level changes in the employer's operation and shall utilize the latest available audit information to develop current policy premium.

D. Servicing carriers shall within five (5) working days after receipt of a request:

- 1) process an employer's request for cancellation;
- 2) accept or deny an employer's request for reinstatement, and communicate its response to the employer in writing; and
- 3) issue certificates of insurance.

E. Servicing carriers shall mail additional and return premium adjustments to employers within ten (10) working days of their recording on servicing carrier records. If additional premium adjustments are not received from employers within forty-five (45) days from the date of mailing of the additional premium adjustment, and if the amount of premium due is not in good faith disputed by the employer, the servicing carrier may implement the cancellation procedures set out in Section 11 of this Rule and Regulation.

F. Servicing carriers shall use diligent efforts in pursuing collection of any past due premiums owed by employers. Except where there is evident a potential that the past due premium amount will be compromised or settled, or where the past due premium amount is in dispute and being actively resolved, such efforts shall include, but not be limited to, the following:

- 1) At least three (3) attempts by the servicing carrier to collect the past due premium from the employer through telephone contacts, billing statements, notices, etc.;

- 2) Referral of the past due premium to in-house collection units or to a collection agency for further action;
- 3) Commencement of legal action against the employer; and
- 4) Levy and execution of a judgment obtained as a result of legal action.

G. Except for policies issued subject to any retrospective rating plan approved for use in the Plan, servicing carriers shall complete and forward, and employers shall receive, final premium audits within one hundred and twenty (120) days of termination of a workers' compensation policy issued through the Plan. For purposes of this Section, "final premium" means the premium determined using payroll or other appropriate premium basis and the rates, rules and classifications approved for use during the policy period.

If the servicing carrier has not established, as set out above, the final premium within 120 days of termination of the policy, or within any extension of time as provided below, the servicing carrier is prohibited from billing or collecting any additional premium from the employer exceeding the latest billed premium immediately prior to the 120 day time limit. However, the employer, upon written request to the servicing carrier, shall be entitled to a final premium audit for the purpose of determining if the employer has been overcharged.

If the servicing carrier is unable, due solely to the failure of the employer to cooperate, to examine and audit the records of the employer that relate to the calculation of the final premium, then the 120 day period set out above shall begin when the servicing carrier is able to complete examination and audit of the employer's records. The servicing carrier must notify the employer in writing within the 120 day period of the reasons for its inability to establish the final premium.

For policies subject to retrospective rating, the final premium shall be established in accordance with conditions established within the policy, and adjustment of the final retrospective premium shall be permitted only if there is a clerical error.

H. Servicing carriers shall notify employers, in writing, within ninety (90) days of receipt of the assignment, of available loss control services and safety information, which notice shall advise employers that utilization of such services is mandatory and shall include instructions for obtaining the services and information. Servicing carriers shall respond to an employer's request for loss control services and safety information within sixty (60) days of receipt of the request. Loss control services shall include, but not be limited to, the following:

- 1) Review of the employer's past accident experience to determine causes and trends;
- 2) Review of the employer's potential exposures;
- 3) Review of the employer's current loss control program and loss control activities, if any;

- 4) Recommendations for employer control of actual or potential exposures and, where applicable, program activities or management principles;
- 5) Description of the employer's operations and loss potentials for classification and underwriting purposes; and
- 6) Review of recommendations made in prior surveys of the employer as to implementation or completion of such recommendations.

Servicing carriers shall make reasonable recommendations, if any, in writing to the employer within thirty (30) days of completion of the survey. If the employer, within ninety (90) days of receipt of such recommendations, fails to demonstrate that it intends to, or that it has already substantially complied with, such recommendations, the servicing carrier may implement the cancellation procedures set out in Section 11 of this Rule and Regulation. In lieu of implementing such cancellation procedures, the servicing carrier may impose the Assigned Risk Adjustment Program (ARAP) surcharge on the employer.

I. In addition to the loss control services described in Subsection (H) of this Section, servicing carriers shall provide the following loss control consulting surveys:

- 1) A minimum of one survey annually for employers with estimated premium greater than \$25,000;
- 2) A minimum of one survey annually for employers with estimated premium between \$5,000 and \$25,000 and with a Best's Loss Control Rating of seven (7) or greater. "Best's Loss Control Rating" means the most recent Workers' Compensation Hazard/Exposure Index Rating published in Best's Loss Control Engineering Manual; and
- 3) For employers not meeting the criteria set out in Subdivisions (1) and (2) of this Subsection, servicing carriers will conduct a survey if deemed necessary by the servicing carriers' Underwriting or Loss Control Management.

Reasonable recommendations will be made by the servicing carrier and implemented by the employer as provided in Subsection (H). If the employer fails to provide the servicing carrier reasonable access to its operations, the servicing carrier may implement the cancellation procedures set out in Section 11 of this Rule and Regulation. In lieu of implementing such cancellation procedures, the servicing carrier may impose the Assigned Risk Adjustment Program (ARAP) surcharge on the employer.

J. Loss records of employers shall be maintained by servicing carriers and shall be made available to employers, within thirty (30) days of receipt of a written request, to allow analysis of accident causes and identification of accident trends.

K. Servicing carriers shall assist employers participating in the Plan to develop and establish programs for medical cost containment, which programs shall be consistent with the provisions of the Workers' Compensation Law,

Arkansas Code Annotated §§ 11-9-101, et seq. Such programs shall include, but not be limited to:

- 1) reasonable pre-certification, pre-authorization or utilization reviews which do not unduly delay, or interfere with or impede, the authorized practice of medicine and delivery of reasonable medical care;
- 2) development of preferred provider organization(s) for the provision of medical services;
- 3) procedures for auditing and monitoring medical costs;
- 4) medical and catastrophic injury case management systems;
- 5) "work hardening", rehabilitation, "return to work" and retraining programs; and
- 6) such other medical cost containment programs which are filed by the Council and approved by the Commissioner for use in the Plan.

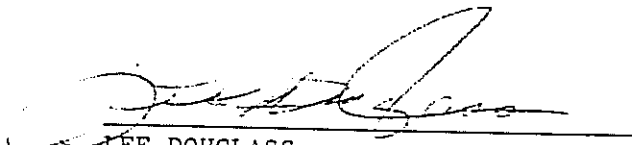
#### SECTION 13. PENALTIES

A. Any carrier, servicing carrier or agent who refuses or neglects to comply with the provisions of this Rule and Regulation shall be subject to administrative action provided for in the Arkansas Insurance Code, Arkansas Code Annotated §§ 23-60-101, et seq.

B. Any servicing carrier who fails to comply with the requirements of Section 12 of this Rule and Regulation, as reported to the Commissioner by the Council, may have their designation to act as servicing carriers suspended or revoked upon notice and hearing pursuant to Arkansas Code Annotated §§ 23-61-301, et seq.

#### SECTION 14. SEVERABILITY

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



LEE DOUGLASS  
INSURANCE COMMISSIONER

1-17-92  
DATE

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## Transmittal Sheet

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W.J. "BILL" McCUEN  
SECRETARY OF STATE  
LITTLE ROCK, ARKANSAS

W.J. "Bill" McCuen

Secretary of State  
State Capitol Rm. 010  
Little Rock, Arkansas 72201-1094

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Name of Agency Arkansas Insurance Department

Department Legal Division

Contact Person Donald K. Switzer or Jean Langford, 686-2999

Statutory Authority for Promulgating Rules A.G.A. §§23-61-108, 23-61-303, 25-15-203(2) and Act 1153 of 1993

Intended Effective Date	Permanent Rule 54	Date
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<input checked="" type="checkbox"/> 20 Days After Filing **	Final Date for Public Comment . . . . .	<u>3/29/94</u>
<input type="checkbox"/> Other	Filed With Legislative Council . . . . .	<u>3/14/94</u>
<u>**No later than 3-30-1994</u>	Reviewed by Legislative Council . . . . .	<u>TBA</u>
	Adopted by State Agency . . . . .	<u>3-30-94</u>

### CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted In Compliance with Act 434 of 1967 As Amended.

*Jean Langford*  
\_\_\_\_\_  
Signature

Chief Counsel

\_\_\_\_\_  
Title

3-9-1994

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LITTLE ROCK, ARKANSAS  
COMPENSATION INSURANCE PLAN  
BY \_\_\_\_\_

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- 26 SECTION 21. SEVERABILITY

27 SECTION 1. AUTHORITY

28 This Rule and Regulation is adopted and promulgated by the Insurance  
29 Commissioner for the State of Arkansas ("Commissioner") pursuant to the  
30 authority vested in the Commissioner by Act 561 of 1991 [codified at  
31 Arkansas Code §§ 23-67-201 et seq.]; Act 1155 of 1993 [An Act amending  
32 Arkansas Code §§ 23-67-201 et seq.]; Act 796 of 1993 [An Act amending  
33 Chapter 9 of Title 11, Arkansas Code]; Act 1269 of 1993 [An Act  
34 supplementing Chapter 67 of Title 23, Arkansas Code]; and by Arkansas Code  
35 §§23-61-108, 23-67-119, 23-79-109, and 25-15-201 et seq.

36 SECTION 2. EFFECTIVE DATE: EMERGENCY

37 The provisions of this Rule and Regulation shall become effective  
38 March 31, 1994.

39 SECTION 3. PURPOSE

40 The purpose of this Rule and Regulation, as amended, is to reform  
41 the mandatory Workers' Compensation Insurance Plan ("WCIP" or "Plan") to  
42 assure coverage for employers who are in good faith entitled, but unable  
43 to procure, workers' compensation and employers' liability insurance in

1 the voluntary market, and to provide for the fair, efficient, and  
2 equitable operation and regulation of the Plan.

3 SECTION 4. DEFINITIONS

4 A. "Commissioner" shall mean the Insurance Commissioner for the State  
5 of Arkansas.

6 B. "Plan" or "WCIP", shall mean the Arkansas Workers' Compensation  
7 Insurance Plan.

8 C. "Plan Administrator" means such organization or organizations to  
9 which the responsibility for administering the affairs of the Plan may,  
10 from time to time, be delegated, including but not limited to such  
11 functions and duties as rates, forms, and statistics.

12 D. "National Council on Compensation Insurance" or "Council" means a  
13 rating organization or advisory organization of that name which is  
14 licensed in this State to make and file rates, classifications, and rating  
15 plans for workers' compensation insurance including rates for the residual  
16 market.

17 E. "Producer" means a person designated by and representing an employer  
18 which said person is properly licensed to sell or place workers'  
19 compensation and employers' liability insurance in the State of Arkansas  
20 whose privileges under the Plan have not been suspended or revoked by the  
21 Commissioner.

22 F. "Affiliated Insurers" means an insurer that directly, or indirectly  
23 through one (1) or more intermediaries, controls, or is controlled by, or  
24 is under common control with, the insurer specified. The term "control"  
25 means the possession, direct or indirect, of the power to direct or cause  
26 the direction of the management and policies of an insurer, whether  
27 through the ownership of voting securities, by contract, or otherwise.  
28 Control shall be deemed to exist if any person or business enterprise,  
29 directly or indirectly, owns, controls, holds with the power to vote, or  
30 holds proxies, representing ten (10) percent or more of the voting  
31 securities of any other insurer.

32 G. "Assigned Carrier" means the insurer that has been assigned to  
33 provide coverage to an employer under this Plan. An assigned carrier can  
34 either be a "servicing carrier" as hereinafter defined or a direct  
35 assignment carrier as defined below.

36 H. "Direct Assignment Carrier" means an insurer, other than a servicing  
37 carrier, that has elected and been authorized to receive direct  
38 assignments pursuant to either Option 1 or Option 2 under Section 10 of  
39 this Plan.

40 I. "Servicing Carrier" means an insurer, other than a direct assignment  
41 carrier selected by the Commissioner pursuant to Section 12(1) to receive  
42 assignments.

1 J. "Employer" means any business organization or enterprise that is  
2 required by statute to maintain workers compensation insurance in this  
3 State, regardless of the domicile or principal place of business of such  
4 organization or enterprise. The term shall include any business  
5 organizations or enterprises that are affiliated as a result of common  
6 management or common ownership.

7 K. "Articles of Agreement" or "Articles" means the reinsurance  
8 mechanism authorized under this Plan to provide reinsurance to the  
9 servicing carriers on employers assigned to them under this Plan, which  
10 said agreement and any amendments thereto shall be provided to the  
11 Commissioner but which, in cases of conflict between them and this Rule  
12 and Regulation, shall be subordinate to this Rule and Regulation.

13 L. "Workers' Compensation Insurance" means:

14 (a) Statutory workers' compensation and occupational disease coverage as  
15 required by Arkansas Code §§11-9-401 et. seq., 23-67-119, and  
16 23-67-201 et seq., including also liability under the Longshore and  
17 Harbor Workers' Compensation Act, as amended, and the Federal Coal  
18 Mine Health and Safety Act of 1969, as amended;

19 (b) Employers liability insurance written in connection with a workers'  
20 compensation policy; and

21 (c) Such other coverages as approved by the Commissioner.

22 M. "Net Premiums Written" means the gross direct premiums charged less  
23 all premiums (except dividends and savings refunded under participating  
24 policies) returned to insureds for all Workers Compensation and  
25 Occupational Disease Insurance, exclusive of premiums for employers  
26 subject to this Plan, and for employers written under the National Defense  
27 Projects Rating Plan and under excess policies.

28 N. "Collected Premium" means the gross direct premium charged and  
29 physically collected and receipted for all employers subject to this Plan.

30 O. "Voluntary Offer of Coverage" means a legitimate, good faith offer  
31 of workers' compensation insurance made by a workers' compensation insurer  
32 to an employer on a "voluntary" basis outside this Plan, which said offer  
33 is either: (i) of such workers' compensation insurance on a monoline basis  
34 and on a reasonable rating plan approved for use in Arkansas by the  
35 Commissioner for that insurer; or (ii) of such workers' compensation  
36 insurance in combination or coordination with other property and/or  
37 casualty coverages and limits desired by the employer and as such insurer  
38 may also offer; provided however, that such insurer shall apply its filed  
39 rating plan (including all applicable discounts or credits) to such  
40 employer in a good faith, non-discriminatory manner. "Voluntary Offer of  
41 Coverage" shall in no event be interpreted as including or referring to an  
42 offer, entreaty or opportunity presented for coverage under any type of  
43 self-insured workers' compensation plan.

44 Neither the Plan Administrator(s) nor the assigned carrier(s) shall  
45 have a responsibility to determine whether the putative voluntary offer of



1 coverage is truly "voluntary", but any agent or broker and any insurer  
2 knowingly submitting an offer of workers compensation coverage to an  
3 employer which does not meet the above definition of a bona fide  
4 "voluntary offer" may be in violation of Ark. Code Ann. §§23-66-205 et.  
5 seq. and Section 20.D. of this Rule and Regulation.

6 P. "Good faith bona fide dispute" means a dispute between an employer  
7 and an insurer where the employer, or someone on its behalf, has provided  
8 written notice of the dispute to the insurer. The employer must have  
9 given reasonable notice to the insurer of the specific areas of the  
10 dispute and have requested voluntary resolution or conciliation of the  
11 matter(s) in dispute.

## 12 SECTION 5. ELIGIBILITY FOR PLAN

13 A. Any employer required to secure the payment of workers' compensation  
14 pursuant to Arkansas Code §11-9-404(a)(1) shall be entitled to workers'  
15 compensation insurance through the Plan, provided:

16 1) Within sixty (60) days preceding the date of application, the  
17 employer must have applied for workers' compensation coverage and  
18 have been rejected by at least two (2) insurers, specifically  
19 including, where applicable, the insurer providing coverage to the  
20 employer at the time of application;

21 2) Within sixty (60) days preceding the date of application, the  
22 employer must not have rejected a "voluntary offer of coverage" from  
23 an insurer; and

24 3) The employer complies with the requirements of Section 6 and  
25 Section 8 of this Rule and Regulation in applying for workers'  
26 compensation insurance through the Plan.

27 B. Any employer eligible to obtain workers' compensation insurance  
28 through the Plan, as provided in Subsection (A) of this Section, must also  
29 in good faith be entitled to such insurance. Good faith will be presumed  
30 in the absence of clear and convincing evidence to the contrary. An  
31 employer is not in good faith entitled to insurance if any of the  
32 following circumstances exit:

33 1) If, at the time of application, a self-insured employer is aware  
34 of pending bankruptcy proceedings; insolvency; cessation or  
35 impending cessation of operations; or conditions that would probably  
36 result in occupational disease or cumulative injury claims from  
37 exposures incurred while the employer was self-insured.

38 2) If the employer has failed or refused to comply with all  
39 effective laws, orders, rules, or regulations made by public  
40 authorities relating to the welfare, health and safety of employees.

41 3) If the employer has an outstanding obligation for workers  
42 compensation premium on previous insurance; provided, however, that  
43 no employer shall be deemed to be in default of a premium obligation

1 for purposes of this paragraph if all of the sum by which he is  
2 alleged to be in default is properly attributable to a good faith,  
3 bona fide dispute between the insurer on such previous insurance and  
4 the employer over the accuracy or legality of an audit of payroll  
5 performed by or at the request of the insurer or of the accuracy of  
6 the Classification or Classifications assigned to his employees. If  
7 the good faith, bona fide dispute has not been resolved to the  
8 mutual satisfaction of the parties within sixty (60) days of the  
9 reasonable notice to the insurer, in order for the dispute to still  
10 be considered good faith and bona fide, the employer must have  
11 instituted the review proceedings as provided by Ark. Code Ann.  
12 §23-67-119(3)(B).

13 4) If the employer or its representative and/or the producer  
14 knowingly makes a material misrepresentation on the application for  
15 insurance by omission or otherwise; provided however, that in no  
16 event if on or subsequent to the effective date of insurance  
17 coverage there occurs a "compensable injury" within the meaning of  
18 Arkansas Code § 11-9-102(5) may an insurer effect a rescission of  
19 coverage to the prejudice of any such covered employee.

#### 20 SECTION 6. PROCEDURE FOR APPLICATION

21 A. The employer, its representative and/or producer shall file a  
22 completed application in duplicate with the Plan Administrator on a form  
23 prescribed by the Plan Administrator. The application must be  
24 substantially completed, based upon information reasonably available to  
25 the employer and the producer, prior to its submission to the Plan  
26 Administrator.

27 B. The employer shall include as a part of the application a copy of  
28 its latest filed federal employer 940, 941, 941E, 942 or 943 form or  
29 equivalent federal-or state-required verifiable current payroll record,  
30 such as an unemployment wage report, payroll information included in a  
31 certified profit and loss statement, or employer-generated profit and loss  
32 statement with a notarized explanation why such employer is unable to  
33 provide a verifiable payroll record.

34 C. The employer, its representative and/or producer shall forward with  
35 the application and payroll verification an agency check, a certified  
36 check, or a cashier's check payable to the Plan Administrator for the  
37 estimated annual or deposit premium. The amount of deposit premium  
38 payable shall be as provided on the application and in the deposit premium  
39 plan therefor approved by the Commissioner, but nothing herein shall  
40 prohibit an insurer and an employer, after application, to mutually agree  
41 to monthly reporting of payroll and payment of premium.

42 D. In order to promote competition amongst servicing carriers and to  
43 improve the service thereof, the employer applying for initial coverage or  
44 renewal coverage within the Plan may strike up to a maximum of six (6)  
45 servicing carriers from the list of active eligible servicing carriers  
46 then maintained by the Commissioner and the Plan Administrator; provided,  
47 however, that in no event shall an employer be entitled to strike more

1 than one-half of the active eligible servicing carriers; and provided  
2 further, that in no event shall an employer or a Producer acting on his  
3 behalf strike any servicing carrier from the current list unless the  
4 employer and/or his Producer representative has a good faith belief that  
5 such carrier does not provide adequate servicing of Plan business. The  
6 Commissioner has the authority to investigate the exercise of the  
7 "striking right" herein provided, to prevent any abuses thereof, to take  
8 such steps as may be reasonably necessary to prevent negative impact upon  
9 Plan administration, and to sanction violations and abuses, if any, under  
10 current law. An employer may not strike a direct assignment carrier.

11 E. The Plan Administrator shall make available to all Producers copies  
12 of the currently approved Application for Workers' Compensation Insurance  
13 which has been approved for use in the Plan by the Commissioner or shall  
14 direct Producers to the appropriate source if the approved form be  
15 provided by another entity. The Plan Administrator shall itself make  
16 available to Producers at all times a current list of active eligible  
17 servicing carriers on the "Appendix A" to such Application which said  
18 Appendix A shall list all of the current eligible servicing carriers and  
19 addresses and provide a reasonable mechanism thereupon for striking of  
20 same in accordance with Ark. Code Ann. §23-67-206(4) and this Rule and  
21 Regulation. Each employer or Producer representative thereof desiring to  
22 strike a servicing carrier or carriers shall physically attach the  
23 completed "Appendix A" to the Application before forwarding it to the Plan  
24 Administrator as otherwise provided herein. The basic form of "Appendix  
25 A" must be filed by the Plan Administrator as required by Ark. Code Ann.  
26 §23-67-119. Such form need not be re-filed for approval when and as the  
27 list of current eligible servicing carriers is changed or amended, but the  
28 Plan Administrator is, nonetheless, required to provide an informational  
29 copy to the Commissioner upon the making of each change or amendment in  
30 the list. Each such "Appendix A" shall bear a revision date printed upon  
31 its face.

#### 32 SECTION 7. BINDING COVERAGE, ASSIGNMENTS AND POLICY ISSUE

33 A. The Plan Administrator will not bind coverage if the application is  
34 not substantially completed; if payroll verification is not included; or  
35 if a check for the estimated annual or deposit premium is not included  
36 with the application. Upon determination that an application is  
37 deficient, the Plan Administrator shall immediately advise the party  
38 submitting the application by telephone or facsimile that the application  
39 is deficient, and shall further advise the party submitting the  
40 application as to what action is necessary to cure the deficiency. If  
41 such deficiency has not been cured within three (3) normal business days  
42 of such advice, the Plan Administrator shall return all materials  
43 including the check to the submitting party with an explanation of the  
44 rejection. Coverage shall not be considered bound on deficient or  
45 rejected applications; provided, however, that coverage will be considered  
46 bound from the times set forth below and through the three (3) normal  
47 business day period (ending at 5:00 p.m. on the third day) here described  
48 if the application is substantially completed and if a valid check for the  
49 estimated annual or deposit premium has been included with the  
50 application.

1 B. Coverage may be bound under the Plan, for applications submitted as  
2 provided in Section 6, in accordance with the following procedures:

3 1) For all employers, other than those formerly self-insured (either  
4 individually or as part of a group), coverage will be bound at  
5 either 12:01 a.m. on the first day following United States Postal  
6 Service postmark time and date on the envelope in which the  
7 application materials are mailed, or at the expiration of existing  
8 coverage, whichever is later.

9 (a) If there should be no United States Postal Service postmark,  
10 coverage will be effective at 12:01 a.m. of the date  
11 following actual receipt by the Plan Administrator, unless a  
12 later date is requested.

13 2) For employers formerly individually self-insured, coverage will  
14 be bound at either 12:01 a.m. not earlier than sixty (60) days  
15 following the United States Postal Service postmark time and date on  
16 the envelope in which the application materials are mailed, unless a  
17 later dated is requested.

18 (a) If there should be no United States Postal Service postmark,  
19 coverage will be effective at 12:01 a.m. not earlier than  
20 sixty (60) days following the date of actual receipt by the  
21 Plan Administrator, unless a later date is requested.

22 3) For employers who have formerly been members of self-insured  
23 groups, coverage will be bound at the earlier of:

24 (i) 12:01 a.m. not earlier than thirty (30) days following the  
25 United States Postal Service postmark time and date on the  
26 envelope in which the application materials are mailed, unless a  
27 later date is requested;

28 (a) If there shall be no United States Postal Service  
29 postmark, coverage will be effective at 12:01 a.m. not  
30 earlier than thirty (30) days following actual receipt by  
31 the Plan Administrator, unless a later date is requested;

32 OR

33 (ii) at the expiration of existing coverage under the  
34 self-insured group.

35 C. If coverage is bound pursuant to Subsection (B) of this Section, the  
36 Plan Administrator shall immediately issue a thirty (30) day binder in the  
37 name of the assigned carrier with copies to the insured, producer, and the  
38 assigned carrier to which the Plan Administrator assigns the employer.

39 D. Except where otherwise provided in this Plan, all assignments under  
40 the Plan are to be made on an intra-state basis.

1 E. Prior to the expiration of the binder issued under Subsection (C) of  
2 this Section, the assigned carrier shall issue and deliver a policy of  
3 insurance to the employer and forward a copy of the policy to the  
4 producer. The policy shall be issued for a term of at least one (1) year,  
5 unless a shorter term has been requested. A copy of the policy  
6 declarations and all endorsements must be filed with the Plan  
7 Administrator or its designee and forwarded to the producer. The assigned  
8 carrier shall stamp "AR WCIP" on all policies, policy declarations, and  
9 endorsements, and shall provide appropriate notice of policy issuance to  
10 the Workers Compensation Commission.

11 F. Any insurer who wishes to insure an employer as voluntary business  
12 may do so at any time. If such insurer is not the assigned carrier, the  
13 assigned carrier shall cancel its coverage pro rata and the assignment  
14 shall automatically terminate as of the effective date of the voluntary  
15 insurer's insurance policy.

16 G. Any employer desiring insurance for operations in states other than  
17 the state covered by this Plan may request its assigned carrier to furnish  
18 insurance in such additional states in accordance with Section 14 of this  
19 Plan. Plan policies affording coverage on operations in more than one (1)  
20 state must clearly indicate the premium developed for each state  
21 separately.

## 22 SECTION 8. PLAN RATES

23 A. All insurance under the Plan shall be written in accordance with the  
24 classifications, rates, and rating plans established for the Plan and  
25 approved by the Commissioner, except as provided herein. The Plan  
26 Administrator(s) shall file for approval with the Commissioner a rating  
27 plan which shall apply to all Arkansas risks within the Plan which shall:

28 (a) incorporate a tabular "debit" and "credit" system whereby  
29 employers which are experience rated will be either  
30 benefited or penalized depending upon their experience  
31 modification factor;

32 (b) incorporate a "merit rating plan" for all employers which  
33 are not experience rated but which will incorporate the  
34 concept of debits and credits as above to the extent that  
35 the claims experience of the employer may be readily  
36 provable to the satisfaction of the Plan Administrator.

37 It is to be understood that the tabular rating system and rating plan  
38 herein described shall be "revenue neutral" in that it shall be designed  
39 and implemented to produce the same amount of total revenue that is  
40 produced under current rates and rating plans approved by the Commissioner  
41 and in effect from time to time but which will, at the same time, allow  
42 the re-allocation of that total premium burden amongst all employers in  
43 accordance with their safety and loss claims experience.

44 B. The Plan Administrator shall also file for approval an "Alternate  
45 Preferred Plan" which shall apply to employers within the Plan who have

1 carried workers compensation insurance continually for at least four  
2 policy years and who have had better than average loss experience. With  
3 respect to those employers who are experience-rated, it shall apply to all  
4 employers who have an effective experience modification factor of 0.800 or  
5 less, and with respect to those employers otherwise eligible but which are  
6 not experience rated, the Plan Administrator shall, if the employer  
7 provides proof deemed satisfactory to the Plan Administrator, place such  
8 within the Alternate Preferred Plan. If an employer is deemed eligible  
9 for the Alternate Preferred Plan, he or it shall receive credits against  
10 the manual rates in such amounts or percentages as may be proposed by the  
11 Plan Administrator and approved by the Commissioner.

12 All credit adjustments under the Alternate Preferred Plan shall be  
13 made to standard premium.

14 There shall be a rebuttable presumption that no employer within the  
15 WCIP or eligible for coverage thereunder pursuant to Section 5 hereof is  
16 eligible for credits under the Alternate Preferred Plan; the burden is  
17 upon the employer to demonstrate to the reasonable satisfaction of the  
18 Plan Administrator and servicing carrier that it qualifies for same for  
19 the policy year in question. Approval for credits under the Alternate  
20 Preferred Plan shall be on a policy year by policy year basis, and the  
21 employer shall upon each such request be responsible to provide the Plan  
22 Administrator and servicing carrier with all such tax returns, audits,  
23 annual reports, bank statements and the like as may be requested.

24 In order that the credits to be given under the Alternate Preferred  
25 Plan be "revenue neutral" within the Plan as a whole, the Plan  
26 Administrator shall devise and submit a method for offsetting the credits  
27 thereby given by increasing the burden of employers with poor experience  
28 [regardless of length of coverage by workers compensation insurance].

#### 29 SECTION 9. CANCELLATION AND RENEWAL

30 A. An assigned carrier shall have the right to cancel prospectively and  
31 upon thirty (30) days written notice any binder issued by the Plan  
32 Administrator, or any policy it has issued under the Plan:

33 1) Where the employer is not eligible for the Plan as provided in  
34 Section 5 of this Rule and Regulation;

35 2) Where the employer refuses to implement reasonable health, safety  
36 or loss control recommendations of the assigned carrier or of a  
37 duly-authorized government agency;

38 3) Where the employer refuses to allow the assigned carrier  
39 reasonable access to its facilities or to its files and records for  
40 audit or inspection; or

41 4) Where the employer refuses to disclose to the assigned carrier  
42 the full nature and scope of the assigned carrier's exposure.

1 An assigned carrier shall, however, have the right to cancel prospectively  
2 upon ten (10) days' written notice if the cancellation is for nonpayment  
3 of premium when due. An assigned carrier shall have the right to extend  
4 the notice of cancellation if provided reasonable assurance of payment by  
5 the employer, but it may not extend the original due date by more than a  
6 total of thirty (30) days.

7 The assigned carrier shall proceed according to Arkansas Code §11-9-408(b)  
8 in canceling any binder or policy issued under the Plan, including the  
9 requisite notices to the employer and to the Workers Compensation  
10 Commission. All notices of cancellation shall state the hour and date at  
11 which the cancellation is to be effective. If, however, the employer  
12 procures other insurance or becomes self-insured as provided by law within  
13 the notice period, the cancellation date of the policy being cancelled  
14 shall be the effective date of the replacement coverage.

15 B. At least forty-five (45) days prior to the scheduled expiration date  
16 of a policy issued under the Plan, the assigned carrier shall notify the  
17 employer and the producer, in writing, and forwarding the Plan  
18 Administrator a copy, of the impending expiration and instruct the  
19 employer to request the assigned carrier to renew, provided the employer  
20 continues to be eligible for coverage under the Plan. The assigned  
21 carrier must forward the renewal proposal to the employer, with a copy to  
22 the producer and to the Plan Administrator. Within thirty (30) days after  
23 receipt of the estimated annual or minimum deposit premium, the assigned  
24 carrier shall issue a policy, properly stamped "AR WCIP," to the employer  
25 and furnish a copy of the renewal Information Page to the Plan  
26 Administrator or its designee, to the producer, and to the Workers  
27 Compensation Commission. The renewal policy shall be effective upon  
28 expiration of the current policy, or as provided in Section 7 (B)(1),  
29 whichever is later.

30 C. An assigned carrier unwilling to renew an employer assigned to it  
31 shall notify in writing the employer, the producer, and the Plan  
32 Administrator at least forty-five (45) days prior to the scheduled  
33 expiration date of the policy giving the reasons therefor.

34 D. If any employer to which this Plan applies is dissatisfied with its  
35 assigned carrier, the employer may request reassignment by submitting in  
36 writing reasonably acceptable reasons for the request to the Plan  
37 Administrator at least thirty (30) days prior to the scheduled expiration  
38 date of the policy. Further, if the assigned carrier is a direct  
39 assignment carrier, and the said carrier's lack of financial size or  
40 standing results in an employer's inability to obtain related property and  
41 casualty coverages, the employer may make request to the Plan  
42 Administrator for re-assignment at any time such inability becomes clear.

#### 43 SECTION 10. PARTICIPATION

44 All insurers licensed to write workers compensation insurance in this  
45 State are required by Ark. Code Ann. §§23-67-202 and 23-67-205 to  
46 participate in this Plan. An insurer must satisfy its participation  
47 requirement by selecting one of the following options:

1 Option 1: becoming an "unlimited" direct assignment carrier without  
2 limitation and receiving direct assignments from the Plan  
3 Administrator within any risk or class code, as provided for  
4 in this Plan;

5 Option 2: becoming a "limited" direct assignment carrier and receiving  
6 direct assignments from the Plan Administrator either: (i)  
7 within specific risk or class codes only; or (ii) excising  
8 specific risk or class codes; the Plan Administrator shall  
9 make all of the requisite calculations and mathematically  
10 determine on behalf of the Commissioner the appropriate  
11 quota share reinsurance obligations of each Option 2  
12 "limited" direct assignment carrier, which said obligations  
13 the Commissioner hereby imposes on all such carriers; in  
14 effect, each "limited" direct assignment carrier shall by  
15 virtue of this Rule and Regulation participate in the  
16 Articles of Agreement and the reinsurance mechanism solely  
17 as to those risk or class codes (Arkansas exposures only) in  
18 which it does not directly participate; failure of any such  
19 carrier to fulfill these reinsurance obligations may result  
20 in the suspension or revocation of the carrier's certificate  
21 of authority;

22 Option 3: contracting with either an approved direct assignment  
23 carrier or a servicing carrier to accept assignments on its  
24 behalf which contract is to be filed and approved by the  
25 Commissioner. Any policy issued under this option shall not  
26 be eligible for reinsurance under the Articles of Agreement  
27 (this option shall not be available to any Plan participant  
28 until January 1 next following the first year anniversary of  
29 the approval of the Plan); or

30 Option 4: subscribing to the Articles of Agreement authorized  
31 hereunder.

32 Any insurer wishing to select either Option 1 or Option 2 must receive  
33 prior express approval from the Commissioner in writing. Except for newly  
34 licensed insurers, application for such approval must be made at least  
35 ninety (90) days prior to the end of any calendar year. The Commissioner  
36 must review the application and approve or disapprove it within sixty (60)  
37 days. If the application is approved, that insurer will become a direct  
38 assignment carrier on January 1 of the year following the Commissioner's  
39 approval. The Commissioner shall establish, and from time to time may  
40 amend, reasonable written requirements that insurers must meet in order to  
41 be eligible to act as either an unlimited or limited direct assignment  
42 carrier. Those requirements shall consider, among other things, the  
43 insurer's financial standing, availability of resources, length, quality  
44 and focus of experience in the state writing workers compensation  
45 insurance, market share, capacity, and demonstrated compliance with the  
46 mandates of Ark. Code Ann. §§23-67-201 et seq. A subscriber to the  
47 Articles seeking to become a direct assignment carrier must also comply  
48 with the withdrawal provision in the Articles of Agreement.



1 An insurer applying to be licensed or authorized in this State to write  
2 workers' compensation insurance after this Rule and Regulation has been  
3 approved and which desires to become either class of direct assignment  
4 carrier must submit its application to become a direct assignment carrier  
5 at the time it submits its application for a license or request for  
6 workers' compensation authority. The Commissioner shall approve or  
7 disapprove the application at the same time the license is issued. All  
8 affiliated insurers must select the same option. While one insurer may be  
9 designated by affiliated insurers to accept direct assignments on behalf  
10 of each of them, the ultimate financial responsibility under the coverages  
11 issued shall be borne by all of the affiliated insurers, and in such  
12 circumstances the Commissioner may require such securities or guarantees  
13 from each of the affiliated insurers as he may reasonably require to  
14 protect the public interest. The Plan Administrator shall have no  
15 responsibility for determining and monitoring financial strength or  
16 enforcing levels of service or performance of a direct assignment  
17 carrier. All such monitoring and enforcement shall be accomplished by the  
18 Commissioner.

19 Whenever participation under the Articles of Agreement consists of those  
20 insurers cumulatively writing less than forty (40) percent of the total  
21 net workers compensation insurance premiums written by all insurers in  
22 this State as calculated in accordance with the preceding calendar year  
23 figures or whenever the Plan Administrator determines the capacity of  
24 servicing carriers to handle assignments made pursuant to this Plan and  
25 this Rule and Regulation falls below a level which is adequate to handle  
26 all the assignments being made, those insurers that selected Option 4  
27 shall, as of January 1 of the following year, automatically be deemed to  
28 have selected Option 1 for employers insured effective on or after said  
29 January 1. Under this provision all licensed insurers shall automatically  
30 be deemed approved as direct assignment carriers except for those insurers  
31 that have previously made separate arrangements under Option 3. Further,  
32 the Commissioner may, if an adequate number of servicing carriers have not  
33 voluntarily made themselves available, appoint such number of qualified  
34 insurers as are reasonably necessary to service the needs of Arkansas  
35 employers under the Plan.

#### 36 SECTION 11. PLAN ADMINISTRATOR

37 A. The Commissioner shall from time to time designate a Plan  
38 Administrator to administer and operate the Plan.

39 B. The Plan Administrator (or any successor Plan Administrator or  
40 Administrators) shall open and continually operate a centrally - located  
41 office within the State of Arkansas reasonably and readily accessible to  
42 the offices of the Commissioner and at a location and with such staffing,  
43 equipment and facilities as shall be reasonably acceptable to the  
44 Commissioner as being adequate to provide a high quality level of service  
45 to the people of the State of Arkansas.

46 C. The Plan Administrator shall file with the Commissioner for approval  
47 operating rules, procedures, and guidelines consistent with the provisions

1 of this Rule and Regulation for the administration and operation of the  
2 Plan. The Plan Administrator shall publish and make available to all  
3 insurers and producers the operating rules, procedures, performance  
4 standards, and guidelines for the administration and operation of the  
5 Plan. Further, the Plan Administrator shall file for approval its  
6 schedule of fees which it proposes to remit to Producers for policies  
7 written and services provided under the Plan.

8 D. The Plan Administrator shall have the following duties and  
9 responsibilities in addition to any others set forth in this Plan, all of  
10 which are subject to the ultimate control and oversight of the  
11 Commissioner:

- 12 (1) administering, managing, and enforcing the Plan subject to  
13 the provisions contained herein;
- 14 (2) determining the methodology and formula for making  
15 assignments to direct assignment carriers and servicing  
16 carriers pursuant to Section 16 and securing the necessary  
17 information in order to make the assignments;
- 18 (3) processing assigned risk applications pursuant to the  
19 requirements of this Plan;
- 20 (4) establishing eligibility criteria for servicing carriers and  
21 appointing servicing carriers, each of which shall be  
22 subject to the prior approval of the Commissioner;
- 23 (5) establishing written performance requirements for servicing  
24 carriers, including, but not limited to:
  - 25 - verification of ongoing Plan eligibility of the employer
  - 26 - timely and accurate issuance of policies and endorsements
  - 27 - timely and accurate filings with administrative agencies, as  
28 required
  - 29 - maintenance of premiums on policies consistent with manual  
30 rules, rates, rating plans, and classifications
  - 31 - timely and accurate completion and billing of final audits
  - 32 - collection of premium
  - 33 - claim services, including investigation, disability management,  
34 and medical cost control
  - 35 - loss control services and safety information to encourage  
36 employers to make safety a part of their business
  - 37 - Cooperation with the Commissioner and with the Workers  
38 Compensation Commission and Arkansas Department of Labor in

1 carrying out and effectuating the safety mandates of Act 796  
2 of 1993 and such Rules and Regulations as may be promulgated  
3 thereunder

- 4 - payment of producer fees
- 5 - issuance of renewal proposals and non-renewal notices
- 6 - assurance of insured and insurer compliance with all terms  
7 and conditions of policy contract
- 8 - resolution of complaints and response to insured/producer  
9 inquiries
- 10 - reporting financial and statistical data to producers and  
11 insureds, as well as to the Commissioner
- 12 - requirement to consult with and keep insureds apprised of  
13 developments in incurred claim cases;
- 14 (6) keeping servicing carriers apprised of all required  
15 Performance Standards, monitoring servicing carrier  
16 performance and enforcing performance requirements and  
17 incentives;
- 18 (7) administering the dispute resolution mechanism as provided  
19 in Section 17;
- 20 (8) developing and implementing assigned risk operating rules  
21 and forms to the extent necessary to carry out the purposes  
22 of this Plan;
- 23 (9) informing the Commissioner of any insurer that is not  
24 participating in this Plan; and
- 25 (10) monitoring the performance and operation of the Plan and  
26 initiating and requesting approval of amendments thereto as  
27 appropriate.

28 The Plan Administrator shall also be responsible for determining the  
29 expenses for the operation of the Plan, exclusive of the Plan  
30 Administrator's expenses incurred in connection with responsibilities it  
31 has under the Articles, and shall assess each insurer participating in the  
32 Plan for those expenses on an equitable basis as determined by the Plan  
33 Administrator and approved by the Commissioner.

34 E. Commencing no later than March 1, 1994, the Plan Administrator shall  
35 file with the Commissioner quarterly results of the Plan, including, but  
36 not limited to, premiums written, earned, and collected, losses paid,  
37 incurred losses, administration and servicing carrier allowances and  
38 remuneration, and service complaints from employers and producers per  
39 servicing carrier.

1 Further, and on March 1, 1994 and on such date each year thereafter, the  
2 Plan Administrator or Administrators shall file with the Commissioner  
3 its/their performance review and Plan results for each Arkansas Plan  
4 servicing carrier with due and appropriate regard for the "Performance  
5 Standards and Procedures for Measuring Servicing Carrier Performance"  
6 referenced in Section 12 and to the criteria set forth in paragraph D.(5)  
7 above.

## 8 SECTION 12. SERVICING CARRIERS

9 With respect to the servicing carriers appointed by the Plan Administrator  
10 and approved by the Commissioner, the following shall apply:

11 (1) Eligibility to Act As a Servicing Carrier. The Plan  
12 Administrator shall establish written requirements that insurers  
13 must meet in order to be eligible to act as a servicing carrier.  
14 Those requirements shall consider, among other things, the insurer's  
15 financial standing, availability of resources, length and quality of  
16 experience in the state writing workers compensation insurance,  
17 market share, and demonstrated compliance with the mandates of Ark.  
18 Code Ann. §§23-67-201 et. seq. An insurer that has been approved as  
19 a direct assignment carrier pursuant to Option 1 under Section 10 is  
20 not eligible to be appointed as a servicing carrier under this  
21 Plan. From among those insurers that are eligible and have applied  
22 to act as a servicing carrier, the Plan Administrator shall appoint  
23 a sufficient number of servicing carriers as are needed to handle  
24 the assignments made pursuant to this Plan. The Plan Administrator  
25 may terminate the servicing carrier status, subject to the approval  
26 of the Commissioner, of any insurer that fails to meet the servicing  
27 carrier requirements on a continuing basis. During the first year  
28 this Plan is in effect, any insurer that is qualified as a servicing  
29 carrier under any similar Plan which was previously in effect in  
30 this State and continues to be qualified as of the date this Plan  
31 takes effect will be deemed to be a qualified servicing carrier  
32 under this Plan.

33 (2) Quarterly Operations Report. Each servicing carrier shall  
34 provide a quarterly report to the Plan Administrator in such format  
35 and at such time as determined by the Plan Administrator. This  
36 report, among other things, shall provide information on the  
37 servicing carrier's operations related to Plan business in the  
38 following areas: underwriting, auditing, claims, loss control,  
39 premium collection, and customer service.

40 (3) Standards for Servicing Carrier Performance, Compensation,  
41 and Incentives. The Plan Administrator shall, with the approval of  
42 the Commissioner, establish written minimum levels of acceptable  
43 performance for servicing carriers and shall establish procedures  
44 for measuring servicing carrier performance. Servicing carriers  
45 shall manage losses in compliance with the performance standards  
46 established hereunder. The Plan Administrator shall also establish  
47 the compensation for servicing carriers which shall take into  
48 consideration, among other things, provisions for (a) rewarding

1 servicing carriers for positive action targeted at reducing losses  
2 and costs, and (b) disincentives for inefficiencies and poor  
3 service, and (c) servicing carrier capacity. And, in accordance  
4 with Ark. Code § 23-67-204 (k) the performance plan shall provide  
5 that no less than Thirty-three percent (33%) of the servicing  
6 carrier's remuneration shall be based upon how well or how poorly it  
7 complies with the standards for servicing carrier performance,  
8 including particularly, but not limited to, a review of collected  
9 premium as versus written premium and by review of loss ratios of  
10 its book of business and degree of improvement therein. Such  
11 compensation system shall be made effective with respect to and  
12 shall apply to all servicing carrier contracts effective on or after  
13 September 1, 1993. The Plan Administrator, as approved by the  
14 Commissioner, shall on an equitable and consistent basis provide  
15 that those monies that would otherwise have gone to servicing  
16 carriers that did not perform up to an acceptable standard shall be  
17 distributed amongst those servicing carriers that met or exceeded  
18 the performance standards.

19 (4) Each servicing carrier shall continually employ such number  
20 of qualified administrative personnel and dedicate such equipment  
21 and facilities to the administration of the Arkansas Workers'  
22 Compensation Insurance Plan as the Commissioner, in his reasonable  
23 discretion, deems adequate to service the needs of the Plan; and,  
24 further, the standards for servicing carrier performance shall  
25 include a requirement that each of them shall:

26 (i) provide a level of service no less than that provided to  
27 employer-insureds in its voluntary workers compensation line of  
28 business and assure same by putting into effect internal  
29 administrative procedures which shall assure that such is the  
30 case;

31 (ii) maintain with the Commissioner a list of responsible  
32 management personnel of the insurer qualified to make  
33 administrative decisions on the insurer's behalf concerning  
34 policies issued within the Plan;

35 (iii) keep the Commissioner continually advised of the address  
36 and telephone number of the insurer's office servicing the Plan  
37 on its behalf;

38 (iv) maintain a toll-free telephone number or numbers adequate  
39 to service the Plan and keep the Commissioner, employers, the  
40 Workers Compensation Commission, and producers continually  
41 apprised of same;

42 (v) establish a program and procedure whereby such carriers  
43 shall not make ultimate determination as to joint settlement of  
44 claims without consulting with the employer insured; nothing  
45 herein shall be deemed to alter or abridge the servicing  
46 carrier's ultimate right and authority under the law and contract

1 to handle and determine the defense of workers' compensation  
2 claims;

3 (vi) maintain its billing and rating procedure in timely  
4 compliance with applicable Orders of the Commissioner approved  
5 rate filings and approved rule and rating plans; and

6 (vii) such other service or performance standards including, but  
7 not limited to, matters relating to loss experience, safety and  
8 loss control success, profitability, underwriting, billing and  
9 collection of premium, audits, claims, customer service, and such  
10 accounting and statistical results reporting as may be  
11 specifically required by the Commissioner.

12 The written "Performance Standards and Procedures for Measuring  
13 Servicing Carrier Performance" hereunder are those currently in effect and  
14 and are those established by the Council. All of which said provisions  
15 are expressly incorporated herein and made a part hereof; such Performance  
16 Standards and Procedures for Measuring Servicing Carrier Performance may  
17 be amended and supplemented from time to time with the prior, express  
18 written approval of the Commissioner; provided, however, that no servicing  
19 carrier shall be subjected to the administrative fine or penalty provided  
20 for in subparagraph (7) hereof as to any particular performance standard  
21 of which it has not had at least three (3) month's notice. All servicing  
22 carriers shall be deemed to have Notice upon the Plan Administrator's  
23 receipt of approval from the Commissioner.

24 (5) Servicing carriers may, within the reasonable discretion of  
25 the Commissioner, join cooperatively with other licensed casualty  
26 insurers or general business corporations for the purpose of  
27 satisfying other duties as servicing carriers, including but not  
28 limited to policy issuance, claim review and payment, accounting and  
29 auditing and loss control and safety functions. Any insurer  
30 applying for approval as a servicing carrier, or any currently  
31 approved servicing carrier which has contracted or agreed to  
32 contract with a third party, shall make full disclosure of such  
33 party and provide the Plan Administrator and Commissioner with all  
34 such information regarding same as they may request. All such third  
35 party contractual arrangements and amendments thereof shall be  
36 subject to review, examination and approval or disapproval of the  
37 Commissioner upon request. No such contract of a servicing carrier  
38 with another entity will in any manner lessen the duties and  
39 obligations of the servicing carriers or the standards by which  
40 their performance is to be measured.

41 (6) Monitoring and Enforcement. The Plan Administrator, on  
42 behalf of the Commissioner, shall monitor and review servicing  
43 carrier performance by (1) reviewing the quarterly and annual  
44 reports; (2) requiring and reviewing self-audits; (3) conducting  
45 on-site audits of all servicing carriers no less often than once per  
46 biennium; and (4) reviewing any other information available that  
47 relates to the servicing carrier. The Plan Administrator shall  
48 require servicing carriers to maintain desired performance levels

1 and will take appropriate remedial action where necessary including,  
2 but not limited to the remuneration adjustment program discussed  
3 above, and the establishment and administration of a progressive  
4 discipline program which may lead to terminating an insurer's  
5 servicing carrier status. In order to fulfill its responsibilities  
6 under this Plan, the Plan Administrator shall have the right, itself  
7 or through authorized representatives, at all reasonable times  
8 during regular business hours, to audit and inspect the books and  
9 records of any servicing carrier with respect to any policies,  
10 claims, or related documents coming within the purview of this Plan,  
11 the Articles, or the reinsurance mechanism. Each servicing carrier  
12 shall, further, have the responsibility of reimbursing the  
13 Commissioner for any reasonable expenses of travel and lodging,  
14 including meals, which he or any of his designees may incur in  
15 carrying out their duty of monitoring and enforcement.

16 (7) In addition to the adjustments to remuneration of servicing  
17 carriers as discussed above and the progressive discipline  
18 procedure, servicing carriers are subject to the imposition by the  
19 Commissioner, after notice and hearing, of administrative fine or  
20 penalty in the sum of not more than One Thousand Dollars (\$1,000.00)  
21 for each violation of standard. Violations of standards of  
22 performance shall be reviewed annually by the Plan Administrator and  
23 the Commissioner and determined cumulatively under each separate  
24 performance standard.

#### 25 SECTION 13. DIRECT ASSIGNMENT CARRIERS

26 With respect to the direct assignment carriers approved by the  
27 Commissioner, the following shall apply:

28 (1) The Commissioner may terminate the limited or unlimited  
29 direct assignment carrier status of any carrier that fails to meet  
30 the performance requirements set forth herein on a continuing basis.

31 (2) Annual Operations Report. Each unlimited and each limited  
32 direct assignment carrier shall provide an annual report to the  
33 Commissioner in such format and at such time as determined by the  
34 Commissioner. This report, among other things, shall provide  
35 information on the direct assignment carrier's operations related  
36 to Plan business in the following areas: underwriting, auditing,  
37 claims, loss control, premium collection, and customer service.

38 (3) Each direct assignment carrier shall continually employ such  
39 number of qualified administrative personnel and dedicate such  
40 equipment and facilities to the administration of the Arkansas  
41 Workers' Compensation Insurance Plan as the Commissioner, in his  
42 reasonable discretion, deems adequate to service the needs of the  
43 Plan; and, further, the standards for direct assignment carrier  
44 performance shall include a requirement that each of them shall:

45 (i) provide a level of service no less than that provided to  
46 employer-insureds in its voluntary workers compensation line of

1 business and assure same by putting into effect internal  
2 administrative procedures which shall assure that such is the  
3 case;

4 (ii) maintain with the Commissioner a list of responsible  
5 management personnel of the insurer qualified to make  
6 administrative decisions on the insurer's behalf concerning  
7 policies issued within the Plan;

8 (iii) keep the Commissioner continually advised of the address  
9 and telephone number of the insurer's office servicing the Plan  
10 on its behalf;

11 (iv) maintain a toll-free telephone number or numbers adequate  
12 to service the Plan and keep the Commissioner, employers, the  
13 Workers Compensation Commission, and producers continually  
14 apprised of same;

15 (v) establish a program and procedure whereby such direct  
16 assignment carriers shall not make ultimate determination as to  
17 joint settlement of claims without consulting with the employer  
18 insured; nothing herein shall be deemed to alter or abridge the  
19 direct assignment carrier's ultimate right and authority under  
20 the law and contract to handle and determine the defense of  
21 workers' compensation claims;

22 (vi) maintain its billing and rating procedure in timely  
23 compliance with approved orders of the Commissioner, approved  
24 rate filings and approved rule and rating plans; and

25 (vii) such other service or performance standards including, but  
26 not limited to, matters relating to loss experience, safety and  
27 loss control success, profitability, underwriting, billing and  
28 collection of premium, audits, claims, customer service, and such  
29 accounting and statistical results reporting as may be  
30 specifically required by the Commissioner.

31 The written "Performance Standards and Procedures for Measuring  
32 Servicing Carrier Performance" hereunder (which shall also apply to direct  
33 assignment carriers) are those currently in effect and are those  
34 established by the Council, all of which said provisions are expressly  
35 incorporated herein and made a part hereof; such Performance Standards and  
36 Procedures for Measuring Servicing Carrier Performance may be amended and  
37 supplemented from time to time with the prior, express written approval of  
38 the Commissioner; provided, however, that no direct assignment carrier  
39 shall be subjected to the administrative fine or penalty provided for in  
40 subparagraph (5) hereof as to any particular performance standard of which  
41 it has not had at least three (3) month's notice from the Commissioner.

42 (4) Monitoring and Enforcement. The Commissioner, shall monitor  
43 and review direct assignment carrier performance by (1) reviewing  
44 the annual reports; (2) requiring and reviewing self-audits; (3)  
45 conducting on-site audits of direct assignment carriers as



1 determined reasonable; and (4) reviewing any other information  
2 available that relates to that carrier. The Commissioner shall  
3 require direct assignment carriers to maintain desired performance  
4 levels and will take appropriate remedial action where necessary  
5 including the establishment and administration of a progressive  
6 discipline program which may lead to terminating an insurer's direct  
7 assignment carrier status. In order to fulfill his responsibilities  
8 under this Plan, the Commissioner shall have the right, himself or  
9 through authorized representatives, at all reasonable times during  
10 regular business hours, to audit and inspect the books and records  
11 of any direct assignment carrier with respect to any policies,  
12 claims, or related documents coming within the purview of this Plan.  
13 Each direct assignment carrier shall, further, have the  
14 responsibility of reimbursing the Commissioner for any reasonable  
15 expenses of travel and lodging, including meals, which he or any of  
16 his designees may incur in carrying out their duty of monitoring and  
17 enforcement.

18 (5) In addition to the progressive discipline procedure, direct  
19 assignment carriers are subject to the imposition by the  
20 Commissioner, after notice and hearing, of administrative fine or  
21 penalty in the sum of not more than One Thousand Dollars (\$1,000.00)  
22 for each violation of standard. Violations of standards of  
23 performance shall be reviewed annually by the Commissioner and  
24 determined cumulatively under each separate performance standard.

25 SECTION 14. INTERSTATE ASSIGNMENTS

26 A. Voluntary Coverage. Any employer assigned under this Plan and  
27 desiring workers' compensation insurance for operations in states other  
28 than Arkansas may request its assigned carrier to furnish such insurance  
29 in such additional states. Workers' compensation insurance in such  
30 additional states may be written by the assigned carrier on a voluntary  
31 basis and in accordance with the law, rates, rules, classifications, and  
32 regulations applicable to the voluntary workers' compensation market in  
33 those states.

34 B. Assigned Risk Coverage. (1) "Similar" Assigned Risk States. If the  
35 assigned carrier does not wish to provide coverage in the additional  
36 states on a voluntary basis, if those states have a Workers Compensation  
37 Insurance Plan that is similar to this Plan and if such other Plan allows  
38 employers applying for coverage thereunder to obtain coverage for their  
39 operations in Arkansas, then the assigned carrier must provide assigned  
40 risk coverage in such additional states as follows:

41 (1) An assigned carrier providing such insurance shall collect  
42 all premiums due on operations located in such other  
43 states. The effective date of such insurance in such  
44 additional states shall be the day after premium is  
45 received; however, in the event coverage in such additional  
46 states is on an "if any" basis, the effective date of such  
47 coverage shall be the day following receipt of an acceptable  
48 request for such insurance by the assigned carrier. A copy

1 of the policy Information Page and all endorsements,  
2 properly stamped "AR WCIP," shall be submitted to the  
3 appropriate Plan Administrator having jurisdiction in the  
4 state where the coverage is effected.

5 (2) The rates, rating plans, classifications, and policy forms  
6 used to provide coverage in such additional states shall be  
7 those applicable to residual market risks that are on file  
8 and approved by the regulators in those additional states.

9 (3) In the event the assigned carrier is a servicing carrier, it  
10 must also be a signatory to an agreement providing  
11 reinsurance for residual market risks similar to the  
12 Articles of Agreement in each state where the coverage will  
13 be provided. If the assigned carrier is a direct assignment  
14 carrier pursuant to Section 10 Option 1 or Option 2, it must  
15 also be authorized to act as a direct assignment carrier in  
16 each state where the coverage will be provided.

17 An assigned carrier unable to provide insurance for an employer in  
18 additional states in accordance with this Section 13.B. or unwilling to  
19 write voluntary coverage in accordance with Section 13.A., shall refer the  
20 request to the Plan Administrator which shall re-assign the employer to an  
21 assigned carrier or carriers that is/are able to provide coverage in  
22 accordance with this Section 13.A. and Section 13.B..

23 (2) All Other States. If the assigned carrier does not wish to  
24 provide coverage in an additional state on a voluntary basis, and if the  
25 state in question does not have a Workers Compensation Insurance Plan that  
26 is similar to this Plan, then the assigned carrier must provide coverage  
27 for operations of an Arkansas employer in such additional state IF AND  
28 ONLY IF:

29 a. the employer has made application to no fewer than two (2)  
30 voluntary workers compensation insurers authorized to insure such  
31 risks in such state and has been declined, if such state in fact,  
32 has a voluntary workers' compensation insurance market; and

33 b. the employer has made application to either an "unsimilar"  
34 assigned risk plan, or to either a competitive or mandatory state  
35 workers compensation fund in such state and has been declined for  
36 coverage.

37 In the event coverage in another state cannot be obtained in the fashion  
38 as set forth above, then the services as rendered by employees of the  
39 Arkansas employer shall be deemed to be services rendered pursuant to a  
40 contract of "employment in this State" as provided by Ark. Code Ann.  
41 §11-9-102(12) and as amended by Section 2 of Act 796 of 1993, and the  
42 assigned carrier shall provide coverage for such operations under this  
43 Plan and under the mandate of Ark. Code Ann. §11-9-404(a)(1); PROVIDED,  
44 HOWEVER, that in the event any employee of any such employer incurs an  
45 injury or occupational disease compensable under the law of such other  
46 State, elects to recover under such laws and is finally successful in so

1 doing, the assigned carrier shall be entitled to recoup from such employer  
2 the additional premium, if any, that would have been billed to that  
3 employer for the services of that employee in that other State by: (i)  
4 either the risk plan or competitive or monopolistic fund operating in such  
5 State; or (ii) a licensed workers compensation insurer legally providing  
6 coverage to an employer in such State pursuant to the laws thereof. Such  
7 carrier recouping premium in this manner shall be entitled to recoup  
8 premium for a period of coverage equal to the period of time the injured  
9 employee performed services in such State (subject to the maximum  
10 differential, if any, between the Arkansas rates and the other State rates  
11 for a period of one policy year) and shall be entitled to bill and collect  
12 from the employer the said premiums as premium due hereunder and subject  
13 to the cancellation procedures set forth in Section 9 hereof.

14 C. Foreign Employers. (1) From Similar Assigned Risk State.  
15 Employers who make application for workers' compensation insurance under  
16 another state's Workers' Compensation Insurance Plan may purchase coverage  
17 for operations in Arkansas without meeting the application requirements of  
18 this Plan, provided: (1) the employer qualifies for such insurance under  
19 the other state's Plan; (2) the employer is in good faith entitled to  
20 insurance under this Plan; (3) the other state's Plan is similar to this  
21 Plan; (4) that Plan also provides for interstate assignments; and (5) the  
22 payroll for the employer's operation in this State is not greater than the  
23 payroll in the other state.

24 The rates, rating plans, classifications, and policy forms used to  
25 provide coverage in Arkansas shall be those that are applicable to  
26 residual market risks in this State and are on file and have been approved  
27 by the Commissioner.

28 The Administrator of the other Plan is authorized to assign  
29 employers with operations in Arkansas to the other Plan's assigned  
30 carriers subject to the following conditions:

31 (1) If the assigned carrier is a direct assignment carrier, it  
32 must also be a direct assignment carrier in Arkansas pursuant to  
33 Section 10 - Option 1 or Option 2 or a servicing carrier in Arkansas  
34 pursuant to Section 12, paragraph (1).

35 (2) If the assigned carrier is a signatory to an agreement  
36 providing reinsurance for residual market risks similar to the  
37 Articles of Agreement in Arkansas, it must also be a signatory to  
38 the Articles of Agreement in this State or a direct assignment  
39 carrier in this State. In addition, if the payroll for the  
40 employer's operation in this State is greater than \$250,000 and if  
41 the assigned carrier is a signatory to the Articles of Agreement or  
42 a similar document in the other state, it must also be a servicing  
43 carrier in this State.

44 (3) The other state's Plan must give the Plan Administrator in  
45 this State similar authority to make interstate assignments.

1           (2) From All Other States. Employers who are either: (i) insured  
2 under an assigned risk plan not "similar" to that of this State; (ii)  
3 insured voluntarily by a workers compensation insurer from such other  
4 State; or (iii) insured under or by a competitive or monopolistic state  
5 fund in such other state, shall be eligible for coverage under this Plan  
6 as to its known and anticipated operations in this State if it is  
7 otherwise eligible for coverage under the terms of Section 5 hereof.

8 D.   Jurisdiction. With regard to interstate assignments and policies,  
9 this Plan shall have jurisdiction over all disputes resulting from the  
10 application of rules, programs, and procedures that are specific to this  
11 State. Disputes regarding application requirements shall be under the  
12 jurisdiction of the state's Plan where the application was filed.

13 SECTION 15.   ASSOCIATION OR SPONSORED MULTIPLE COORDINATED POLICIES

14           Pursuant to the provisions of Ark. Code Ann. §11-9-408(d) [as added  
15 by §12 of Act 796 of 1993] and Ark. Code Ann. §23-67-211 [as added by §1  
16 of Act 1269 of 1993] the Plan Administrator shall develop and administer  
17 a plan for the issuance of multiple coordinated policies of workers'  
18 compensation and employers' liability insurance subject to the approval of  
19 the Commissioner. Such multiple coordinated or group policies may only be  
20 issued to cover groups containing no fewer than five (5) separate  
21 employers who shall not be affiliated with one another in terms of  
22 ownership, control, or right to participate in the profits of an  
23 affiliated enterprise. The "sponsor" or administrator of such policies  
24 must either be a general contractor meeting the financial capacity and  
25 continuity guidelines as shall be set forth in the rating plan and  
26 approved by the Commissioner or a recognized industry association which is  
27 incorporated or organized as a not-for-profit corporation or association  
28 and which has been in existence for no fewer than three (3) years prior to  
29 application for approval as a "sponsor". Further,

30           (i)   each employer within the association or group must  
31               be engaged in the same general business activity  
32               as determined by the Plan Administrator and within  
33               the principles and guidelines of the Scopes of  
34               Basic Manual Classifications as published from  
35               time to time by the National Council on  
36               Compensation Insurance, or some such similar  
37               classification system as may be chosen by the  
38               Commissioner, such as the Standard Industrial  
39               Classifications Manual;

40           (ii)  the sponsor assumes joint responsibility with each  
41               of the employers for the payment of all required  
42               premium, including deposit, and agrees in writing  
43               to subject itself to audit and review of all of  
44               his records and practices relating to the business  
45               to which the association or multiple coordinated  
46               policies shall pertain; and

1 (iii) the sponsor provides the Plan Administrator with  
2 such additional security in the way of cash  
3 deposit, or marketable securities, or a letter of  
4 credit from a National Banking Association  
5 unaffiliated with the sponsor as the Plan  
6 Administrator reasonably deems necessary; the Plan  
7 Administrator may adjust the amount of the  
8 required additional deposit from time to time  
9 depending upon the claim experience of the  
10 association groups and the audited and collected  
11 premium.

12 Multiple coordinated policies shall be issued in the name of each  
13 employer but delivered to the sponsor, and all premiums shall be  
14 calculated upon the wages paid to or received by the employers in  
15 accordance with Plan Rules. All claims experience shall be identified to  
16 each employer and records maintained relative thereto by the Plan  
17 Administrator, including experience modifiers as appropriate.

18 SECTION 16. ASSIGNMENT FORMULA

19 The Plan Administrator shall develop and provide to the Commissioner  
20 detailed procedures for the equitable distribution of employers under this  
21 Plan to assigned carriers. These procedures shall provide a mechanism  
22 that will provide for the random distribution of employers based on each  
23 direct assignment carrier's allocable percentage and the combined  
24 allocable percentage of all servicing carriers, and the amount of  
25 estimated premium in the Plan, so far as practicable. The procedures  
26 shall also define those circumstances where the Plan Administrator will  
27 have the discretion to override the random selection process and shall  
28 account for the variations necessitated by the "striking procedure" set  
29 forth at Section 6 hereinabove and by the risk or class code limitations  
30 on limited direct assignment carriers as set forth in Section 10  
31 hereinabove.

32 The mechanism shall provide that the allocable percentage for each  
33 assigned carrier shall be determined as follows:

34 (1) If the assigned carrier is a direct assignment carrier, its  
35 allocable percentage will be equal to its net premiums written in the  
36 risk or class codes which it is eligible to write hereunder as  
37 compared to the total net premiums written in this State as to those  
38 same class codes.

39 (2) If the assigned carrier is a servicing carrier, it will be  
40 responsible for providing services on behalf of those insurers that  
41 have elected to meet their Plan assignment requirements by subscribing  
42 to the Articles of Agreement pursuant to Section 10, Option 4. Its  
43 allocable percentage will be determined by the Plan Administrator;  
44 however, the combined allocable percentages for all servicing carriers  
45 shall be equal to the combined net premiums written for all  
46 signatories to the Articles of Agreement as compared to the total net  
47 premiums written in this State.

1 (3) If the assigned carrier has entered into contracts to accept  
2 assignments on behalf of other insurers, pursuant to Option 3 in  
3 Section 10, its participation percentage will be increased to reflect  
4 the assignment percentages of such insurers.

5 SECTION 17. DISPUTE RESOLUTION PROCEDURE

6 Any person affected by the operation of the Plan including, but not  
7 limited to, participating companies, employers, producers, and assigned  
8 carriers, who may have a dispute with respect to any aspect of the Plan,  
9 including rating and classification and auditing disputes and any dispute  
10 arising under the Articles of Agreement, may seek a review of the matter  
11 by the Plan Administrator by setting forth in writing with particularity  
12 the nature of the dispute, the parties to the dispute, the relief sought  
13 and the basis thereof. The Plan Administrator, as designee of the  
14 Commissioner, may secure such additional information as it deems  
15 necessary to make a decision and shall in the instance of disputes  
16 involving, comply with all requirements of due process and Ark. Code Ann.  
17 §23-67-119(3) and the Arkansas Appeals Board Objectives and Rules as  
18 approved by the Commissioner.

19 Appeals from employers and insurers on Plan matters regarding employer  
20 disputes shall be within the jurisdiction of the mechanism established to  
21 handle such appeals under the applicable rating law i.e. Ark. Code §  
22 23-67-119(3). All other disputes shall be handled as follows:

23 (1) If the dispute relates to the general operation of the Plan,  
24 excluding individual employer disputes as noted above and those  
25 arising under the Articles of Agreement, the Plan Administrator will  
26 review the matter and render a written decision with an explanation of  
27 the reasons for the decision within thirty (30) days after receipt of  
28 all the information necessary to make the decision. Any party  
29 affected by a decision made by the Plan Administrator may seek a  
30 review by a committee appointed by the President of the National  
31 Council on Compensation Insurance for such purpose. Such committee  
32 shall consist of three (3) senior officers of the Council. A request  
33 for a review by such committee must be made to the Plan Administrator  
34 in writing within thirty (30) days of the date of the Plan  
35 Administrator's decision. Any party affected by the decision of such  
36 committee may seek a de novo review by the Commissioner by requesting  
37 such review, in writing, within thirty (30) days after the date of  
38 such decision.

39 In reviewing any such matter not coming within the scope of Ark. Code  
40 Ann. §23-67-119(3)(B), the Commissioner shall follow those procedures  
41 applicable to administrative hearings in this State. The Commissioner  
42 shall decide the dispute in accordance with the state law, regulation, and  
43 policy and in the interests of the reasonable and proper administration of  
44 this Plan. The Commissioner's decision shall be final, subject to court  
45 review under Ark. Code Ann. § 23-61-307.

1 (2) Except as provided below, if the dispute arises under the  
2 Articles of Agreement, the Administrator designated under the Articles  
3 of Agreement shall first review the matter and render a written  
4 decision with an explanation of the reasons for the decision within  
5 thirty (30) days after receipt of all the information necessary to  
6 make the decision. Any party affected by the decision may seek a  
7 review by the Board of Governors established under the Articles by  
8 requesting such review, in writing, within thirty (30) days of the  
9 date of the decision by the Administrator under the Articles of  
10 Agreement. The Board of Governors must then review the matter and  
11 render its written decision pursuant to the procedures set forth in  
12 the Articles of Agreement. Any party affected by a decision of the  
13 Board of Governors may seek a de novo review by the Commissioner by  
14 requesting such a review in writing within thirty (30) days of the  
15 date of the Board of Governors' decision.

16 If the dispute relates to the expulsion of a participating company  
17 under the Articles of Agreement by the Board of Governors, any appeal may  
18 be taken directly to the Commissioner without first complying with the  
19 procedures contained herein.

#### 20 SECTION 18. SELF-FUNDED PLAN

21 It is ultimately essential for maintaining the viability of the Plan  
22 to establish and maintain rates at a level that will permit the Plan to  
23 operate as a self-funded mechanism. The Plan Administrator shall maintain  
24 necessary ratemaking data in order to permit the actuarial determination  
25 of rates and rating plans appropriate for the business insured through the  
26 Plan. All assigned carriers are required to report their experience on  
27 business written under the Plan to the Administrator in a format  
28 prescribed by the Council. It is the responsibility of the Plan  
29 Administrator to monitor both rate adequacy and Plan results. The Plan  
30 Administrator shall notify the Commissioner if excessive losses are  
31 indicated to enable the Commissioner to take corrective action.

#### 32 SECTION 19. SMALL DEDUCTIBLE POLICY OPTION

33 The Commissioner deems a small deductible policy option to be  
34 "feasible" within the meaning of Ark. Code Ann. §11-9-812(D), and,  
35 accordingly, a Small Deductible Policy Rating Plan which shall be  
36 applicable to both the voluntary market and to the WCIP shall be made  
37 effective, under which each employer shall have the option, in accordance  
38 with the dictates of Ark. Code Ann. §11-9-812, of applying for coverages  
39 which incorporate deductible amounts of no less than \$1,000 per incident  
40 and further deductibles in further increments of \$500 each up to a maximum  
41 of \$5,000 per incident. The Plan Administrator shall develop an  
42 appropriate application incorporating the deductible option and policy  
43 form, along with an actuarially sound premium adjustments for submission  
44 to and approval by the Commissioner. The Commissioner hereby determines  
45 under the dictates of Ark. Code Ann. §11-9-812(D), however, that it is not  
46 "feasible" to require insurers or the Plan Administrator and assigned

1 carriers to ignore claim frequency and/or severity if losses happen to be  
2 within the deductible limit chosen by an employer, and, accordingly, there  
3 shall be no prohibition against insurers, the Plan Administrator, or  
4 assigned carriers using true loss data, including frequency and severity  
5 of losses even within deductibles, for purposes of experience rating.

#### 6 SECTION 20. OTHER STANDARDS AND PENALTIES

7 A. Any insurer, assigned carrier, or producer who refuses or neglects to  
8 comply with the provisions of this Rule and Regulation shall be subject to  
9 administrative action provided for in the Arkansas Insurance Code,  
10 Arkansas Code Annotated §§ 23-60-101, et seq.

11 B. Any servicing carrier who fails to comply with the requirements of  
12 Section 12 of this Rule and Regulation, as reported to the Commissioner by  
13 the Plan Administrator, or any direct assignment carrier who fails to  
14 comply with the requirements of Section 13 may have their designations to  
15 act in such capacities hereunder suspended or revoked upon notice and  
16 hearing pursuant to Arkansas Code Annotated §§ 23-61-301, et seq.

17 C. No direct assignment carrier or servicing carrier insuring an employer  
18 through the Plan may utilize any information gained through its  
19 administrative services for the purpose of securing other insurance  
20 business from such employer. No such carrier shall share or reveal any  
21 such proprietary information with or to any of its agents or brokers, with  
22 or to any other carrier, or, if it is a direct writer, with or to any of  
23 its in-house marketing personnel. Violation of this prohibition shall be  
24 considered an Unfair Method of Competition in violation of the Trade  
25 Practices Act.

26 D. No licensed agent, broker or solicitor or any insurer (whether or not  
27 an assigned carrier) may knowingly submit an offer of workers'  
28 compensation insurance coverage to an employer on a monoline basis on a  
29 rating plan that has not been previously approved by the Commissioner, nor  
30 shall any such person or entity make any offer of workers' compensation  
31 insurance in combination or coordination with other property and/or  
32 casualty coverages or limits which are not desired by the employer, nor  
33 shall such person or entity apply its filed and approved rates or rating  
34 plans (including all applicable discounts or credits) to such employer in  
35 an unfairly discriminatory manner. Any person or entity determined to  
36 have knowingly violated this prohibition shall be deemed guilty of an  
37 unfair or deceptive act or practice in the business of insurance as  
38 provided at Ark. Code Ann. §§23-66-205 et. seq.

#### 39 SECTION 21. SEVERABILITY

40 If any provision of this Rule and Regulation, or the application  
41 thereof to any person or circumstance, is held invalid, such invalidity  
42 shall not affect other provisions or applications of this Rule and  
43 Regulation which can be given effect without the invalid provision or  
44 application, and to that end the provisions of this Rule and Regulation  
45 are severable.