

# ARKANSAS REGISTER

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## Transmittal Sheet

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BY SHARON PRIEST  
SECRETARY OF STATE

Sharon Priest  
Secretary of State  
State Capitol Rm. 01  
Little Rock, Arkansas 72201-1094

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Name of Agency Arkansas Insurance Department

Department ; Legal

Contact Person Roger McNeil, Associate Counsel Phone 372-2820

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### CERTIFICATION OF AUTHORIZED OFFICER

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

\_\_\_\_\_  
Signature

372-2820  
Phone Number

Associate Counsel  
Title

November 8, 1996  
Date

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2 RULE AND REGULATION 54

3 ARKANSAS WORKERS'  
4 COMPENSATION INSURANCE PLAN

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23 SECTION 1. AUTHORITY

24 This Rule and Regulation is adopted and promulgated by the Insurance  
25 Commissioner for the State of Arkansas ("Commissioner") pursuant to the  
26 authority vested in the Commissioner by Act 561 of 1991 [codified at  
27 Arkansas Code §§ 23-67-201 et seq.]; Act 1155 of 1993 [An Act amending  
28 Arkansas Code §§ 23-67-201 et seq.]; Act 796 of 1993 [An Act amending  
29 Chapter 9 of Title 11, Arkansas Code]; Act 1269 of 1993 [An Act  
30 supplementing Chapter 67 of Title 23, Arkansas Code]; and by Arkansas Code  
31 §§23-61-108, 23-67-219, 23-67-310, 23-79-109, and 25-15-201 et seq.

32 SECTION 2. EFFECTIVE DATE

33 The provisions of this Rule and Regulation shall become effective  
34 January 1, 1997, upon statutory filing per Arkansas law.

35 SECTION 3. PURPOSE

36 The purpose of this Rule and Regulation, as amended, is to reform  
37 the mandatory Workers' Compensation Insurance Plan ("WCIP" or "Plan") to  
38 assure coverage for employers who are in good faith entitled, but unable  
39 to procure, workers' compensation and employers' liability insurance in  
40 the voluntary market, and to provide for the fair, efficient, and  
41 equitable operation and regulation of the Plan.

42 SECTION 4. WCIP DEFINITIONS

- 1 A. "Affiliated Insurer" An insurer that directly, or indirectly through  
2 one (1) or more intermediaries, controls, or is controlled by, or is under  
3 common control with another insurer specified. The term "control" means  
4 the possession, direct or indirect, of the power to direct or cause the  
5 direction of the management and policies of an insurer, whether through  
6 the ownership of voting securities, by contract, or otherwise. Control  
7 shall be deemed to exist if any person or business enterprise, directly or  
8 indirectly, owns, controls, holds with the power to vote, or holds  
9 proxies, representing ten (10) percent or more of the voting securities of  
10 any other insurer.
- 11 B. "Articles of Agreement" or "Articles" The reinsurance mechanism  
12 authorized under this Plan to provide reinsurance to the servicing  
13 carriers on employers assigned to them under this Plan, which said  
14 agreement and any amendments thereto shall be provided to and approved by  
15 the Commissioner but which, in cases of conflict between them and this  
16 Rule and Regulation, shall be subordinate to this Rule and Regulation.
- 17 C. "Assigned Carrier" or "Servicing Carrier" The insurer authorized to  
18 receive Plan assignments and provide coverage to eligible employers on  
19 behalf of those participating companies subscribing to the Articles of  
20 Agreement incorporated as a part of the Plan in this state.
- 21 D. "Collected Premium" The gross direct premium charged and  
22 physically collected and receipted for all employers subject to this Plan.
- 23 E. "Commissioner" The Insurance Commissioner for the State of Arkansas.
- 24 F. "Employer" Any business organization or enterprise that is required  
25 by statute to maintain workers' compensation insurance in this State. The  
26 term shall include any business organizations or enterprises that are  
27 affiliated as a result of common management or common ownership.
- 28 G. "National Council on Compensation Insurance, Inc." or "NCCI" The  
29 rating organization or advisory organization licensed in this State to  
30 make and file rates, rating values, classifications, and rating plans for  
31 workers' compensation insurance .
- 32 H. "Net Premiums Written" The gross direct premiums charged less all  
33 premiums (except dividends and savings refunded under participating  
34 policies) returned to insureds for all Workers' Compensation and  
35 Occupational Disease Insurance, exclusive of premiums for employers  
36 subject to this Plan, and for employers written under the National Defense  
37 Projects Rating Plan and under excess policies.
- 38 I. "Plan" or "WCIP" The Arkansas Workers' Compensation Insurance Plan.
- 39 J. "Plan Administrator" Such organization or organizations to which the  
40 responsibility for administering the affairs of the Plan may, from time to  
41 time, be delegated, including but not limited to such functions and duties  
42 as rates, forms, and statistics.
- 43 K. "Premium in Dispute" A workers' compensation insurance premium  
44 obligation in which a bona fide dispute exists only if the employer or its

1 representative has provided:  
2 (a) written notice to the insurer or the servicing carrier  
3 detailing the specific areas of dispute;  
4 (b) an estimate of the premium the employer believes to be correct,  
5 with an explanation of the premium calculation;  
6 (c) payment of the undisputed portion of the premium; and  
7 (d) a written request that includes all information relevant to the  
8 dispute to the Plan Administrator for a hearing before the appropriate  
9 administrative or regulatory body having jurisdiction over appeals on Plan  
10 matters.

11 L. "Producer" A licensed casualty insurance agent or broker as defined  
12 in the State Insurance Code, whose privileges under the Plan have not been  
13 suspended or revoked. Provided however, that such producer shall, for  
14 purposes of the Plan, be considered to be acting on behalf of the insured  
15 or employer applying under the Plan and not as an agent of the Plan  
16 Administrator or of any assigned carrier for Plan business.

17 M. "Undisputed Premium" A workers' compensation insurance premium  
18 obligation that is not the subject of a bona fide dispute.

19 N. "Voluntary Offer of Coverage" A legitimate, good faith offer of  
20 workers' compensation insurance made by a workers' compensation insurer to  
21 an employer on a "voluntary" basis outside this Plan, which said offer is  
22 either: (i) of such workers' compensation insurance on a monoline basis  
23 and on a reasonable rating plan approved for use in Arkansas by the  
24 Commissioner for that insurer; or (ii) of such workers' compensation  
25 insurance in combination or coordination with other property and/or  
26 casualty coverages and limits desired by the employer and as such insurer  
27 may also offer; provided however, that such insurer shall apply its filed  
28 rating plan (including all applicable discounts or credits) to such  
29 employer in a good faith, non-discriminatory manner. "Voluntary Offer of  
30 Coverage" shall in no event be interpreted as including or referring to an  
31 offer, entreaty or opportunity presented for coverage under any type of  
32 self-insured workers' compensation plan.

33 Neither the Plan Administrator(s) nor the servicing carrier(s) shall  
34 have a responsibility to determine whether the putative voluntary offer of  
35 coverage is truly "voluntary", but any agent or broker and any insurer  
36 knowingly submitting an offer of workers' compensation coverage to an  
37 employer which does not meet the above definition of a bona fide  
38 "voluntary offer" may be in violation of Ark. Code Ann. §§23-66-205 et.  
39 seq. and Section 16.D. of this Rule and Regulation.

40 O. "Workers' Compensation Insurance"

41 (a) Statutory workers' compensation and occupational disease liability  
42 insurance including insurance for liability under the Longshore and  
43 Harbor Workers' Compensation Act, as amended, and the Federal Coal  
44 Mine Health and Safety Act of 1969, as amended;

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

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

1 SECTION 5. RULES FOR ELIGIBILITY AND ASSIGNMENT

2 A. Good Faith.

3 The following rules will govern the insuring of employers who are in "good  
4 faith entitled to workers' compensation insurance" as defined herein, but  
5 who are unable to procure such insurance in a regular manner.  
6 For purposes of this Plan, the offer of any reasonable rating plan  
7 approved for use in this jurisdiction shall be deemed an offer of  
8 insurance in a regular manner. Any dispute arising hereunder shall be  
9 subject to the dispute resolution procedure provided in this Plan.

10 (1) Good faith rules of eligibility.

11 Good faith will be presumed in the absence of clear and convincing  
12 evidence to the contrary. An employer is not in good faith entitled to  
13 insurance if any of the following circumstances exist at the time of  
14 application or thereafter, or other evidence exists that such employer is  
15 not in good faith entitled to insurance.

16 (a) At the time of application, a self-insured employer is aware  
17 of pending bankruptcy proceedings, insolvency, cessation of  
18 operations, or conditions that would probably result in  
19 occupational disease or cumulative injury claims from  
20 exposure incurred while the employer was self-insured.

21 (b) The employer, has failed or refused to comply with all  
22 effective laws, rules, or regulations relative to the  
23 welfare, health and safety of employees or loss control  
24 requirements; does not allow reasonable access to the  
25 insurer for audit or inspection under the policy; or does  
26 not comply with any other policy obligations.

27 (c) The employer has an outstanding workers' compensation  
28 insurance premium obligation or other monetary policy  
29 obligation on previous workers' compensation insurance that  
30 is not subject to a bona fide dispute.

31 (d) The employer, its representative, or the producer knowingly  
32 fails to comply with Plan procedures; or knowingly makes a  
33 material misrepresentation on the application by omission or  
34 otherwise, including, but not limited to, the following:  
35 estimated payroll, offers of workers' compensation  
36 insurance, nature of business, name or ownership of  
37 business, previous insurance history, or an outstanding  
38 workers' compensation insurance premium obligation or other  
39 monetary policy obligation of the employer.

40 B. Declinations

41 Within sixty (60) days preceding the date of application, the employer  
42 must have applied for workers' compensation coverage and have been  
43 rejected by at least two (2) insurers, specifically including, where

1 applicable, the insurer providing coverage to the employer at the time of  
2 application.

3 Within sixty (60) days preceding the date of application, the employer  
4 must not have rejected a "voluntary offer of coverage" from an insurer.

5 The employer or its representative shall maintain on record for this  
6 policy period the insurer name, contact person, address, phone number and  
7 date of contact for each insurance company with which it applied for  
8 workers' compensation coverage and make such information available to the  
9 Plan Administrator or servicing carrier upon request.

#### 10 C. Forms and Rates

11 All policies issued to employers to which this Plan applies shall be  
12 written utilizing the classifications, forms, rates, and rating plans  
13 approved by the Commissioner and authorized for use in the residual market  
14 by the Plan Administrator.

#### 15 D. Securing a Requested Effective Date

16 The employer or its representative shall forward an application to the  
17 Plan Administrator using one of the submission methods established by the  
18 Plan Administrator.

19 The employer or its representative may request an effective date not later  
20 than sixty (60) days from the date of application; however, such requested  
21 effective date shall be the later of the following options:

- 22 (1) 12:01 a.m. on the date following receipt by the Plan  
23 Administrator of a complete and eligible application,
- 24 (2) the date of expiration of existing coverage, or
- 25 (3) a date the employer requested.

26 Subject to the review by the servicing carrier, employers which were  
27 formerly self-insured shall secure a requested effective date no later  
28 than 12:01 a.m. sixty (60) days following receipt by the Plan  
29 Administrator of a complete and eligible application.

30 In order to promote competition among servicing carriers and to improve  
31 the service thereof, the employer applying for initial coverage or renewal  
32 coverage within the Plan may strike up to a maximum of six (6) servicing  
33 carriers from the list of active-eligible servicing carriers then  
34 maintained by the Commissioner and the Plan Administrator as provided on  
35 the Appendix A to the application.

#### 36 E. Application Review

37 Upon receipt of the application, the Plan Administrator shall review it  
38 for eligibility and completeness. The Plan Administrator may request  
39 additional information at its discretion to establish eligibility, to  
40 assign appropriate classification codes, to calculate applicable premium,  
41 and to otherwise appropriately process the application. Such information  
42 may include tax documentation, ownership information, contracts, or any

1 other information deemed necessary to process the application. The  
2 employer and/or its representative shall provide this  
3 information/documentation, or provide an acceptable explanation for  
4 failure to provide the requested items within the timeframe established by  
5 the Plan Administrator.

6 Incomplete applications received by the Plan Administrator may, at the  
7 discretion of the Plan Administrator, be returned to the employer or its  
8 representative for completion or, with notice to the employer or its  
9 representative, may be retained by the Plan Administrator pending receipt  
10 of further information. Failure to comply in a timely manner with a  
11 request from the Plan Administrator may result in the rejection of the  
12 application.

#### 13 F. Additional States Coverage

14 Except as indicated on the binder/verification page, all assignments under  
15 this Plan are to be made on an intrastate basis. However, any employer  
16 desiring insurance for operations in states other than those covered by  
17 its servicing carrier may request its servicing carrier to furnish  
18 insurance in the additional state in accordance with the Interstate  
19 Assignments section of this Plan. Plan policies affording coverage on  
20 operations in more than one (1) state must clearly indicate the premium  
21 developed for each state separately.

#### 22 G. Premium Obligations

23 Assignments shall not knowingly be made under this Plan unless all  
24 undisputed workers' compensation premium obligations on any previous  
25 insurance have been met by the employer whether the obligation is to a  
26 servicing carrier or voluntary insurer.

#### 27 H. Initial or Deposit Premium

28 After the application has been reviewed and eligibility has been  
29 determined, the Plan Administrator shall calculate the initial or deposit  
30 premium (depending on state payment options) and inform the employer, its  
31 representative, or the producer of the applicable premium, using the  
32 submission options identified by the Plan Administrator.

33 Note: See individual state Special Rules pages of the Basic Manual for  
34 Workers' Compensation and Employers' Liability Insurance for applicable  
35 initial or deposit premium rules.

#### 36 I. Binding of Coverage

37 The producer or employer must submit the total required initial or deposit  
38 premium to the Plan Administrator, using one of the submission methods  
39 approved by the Plan Administrator. The required initial or deposit  
40 premium must be received within the timeframe established by the Plan  
41 Administrator in order for coverage to be bound on the requested effective  
42 date.

43 The effective date on the binder will be the secured effective date

1 determined in the section entitled "Securing a Requested Effective Date"  
2 only if all of the following occur:

- 3 (1) the Plan Administrator is in receipt of a complete signed  
4 application within the established timeframe,
- 5 (2) the applicant is deemed eligible, and
- 6 (3) the total initial or deposit premium has been received by the  
7 Plan Administrator within an established timeframe.

8 Coverage will not be bound by the Plan Administrator without a complete  
9 signed application and receipt of the appropriate deposit or initial  
10 premium.

11 J. Binder Information

12 The binder/verification page shall be sent to the insured, producer and  
13 servicing carrier and shall remain in effect until canceled or a policy  
14 has been issued. In accordance with Plan procedures, coverage shall not  
15 exist if a binder was not issued.

16 K. Reassignment

17 If the employer is dissatisfied with the servicing carrier, the employer  
18 may request reassignment to another insurer not less than thirty (30) days  
19 nor more than sixty (60) days prior to the expiration of the current  
20 policy unless otherwise approved by the Plan Administrator. The employer  
21 must submit a new application in accordance with the section entitled  
22 "Securing a Requested Effective Date."

23 The employer must also provide the Plan Administrator with an acceptable  
24 reason or reasons for the request with appropriate documentation. The  
25 request for reassignment is subject to approval by the Plan Administrator  
26 and the reassignment shall be made on random basis.

27 L. Producer Information

28 (1) Producer Fee

29 The servicing carrier shall pay a fee to the licensed producer designated  
30 by the employer on new and renewal policies upon payment and receipt of  
31 premium due under the policy. The producer fee shall be based on the  
32 state standard premium charged and collected, and will be paid at the rate  
33 filed by the Plan Administrator with the Commissioner.

34 (2) Producer Changes

35 The employer may designate a licensed producer, and with respect to any  
36 renewal of the assigned insurance, may change the designated producer by  
37 notice to the servicing carrier prior to the date of renewal or, with the  
38 consent of the servicing carrier, at any other time.

39 M. Additional Coverages

40 Additional coverages may be available to the employer through the



1 servicing carrier. See the WCIP Supplement printed at the end of the Plan  
2 for those coverages available in each state.

3 N. Policy Term

4 The policy shall be issued for a term of at least one (1) year, unless  
5 insurance for a shorter term has been requested. A short-term policy may  
6 be obtained only once within a twelve (12)-month period unless agreed to  
7 by the servicing carrier.

8 SECTION 6. CANCELLATION AND RENEWAL

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

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

14 2) Where the employer refuses to implement reasonable health, safety  
15 or loss control recommendations of the servicing carrier or of a  
16 duly-authorized government agency;

17 3) Where the employer refuses to allow the servicing carrier  
18 reasonable access to its facilities or to its files and records for  
19 audit or inspection; or

20 4) Where the employer refuses to disclose to the servicing carrier  
21 the full nature and scope of the servicing carrier's exposure.

22 A servicing carrier shall, however, have the right to cancel prospectively  
23 upon ten (10) days' written notice if the cancellation is for nonpayment  
24 of premium when due. A servicing carrier shall have the right to extend  
25 the notice of cancellation if provided reasonable assurance of payment by  
26 the employer, but it may not extend the original due date by more than a  
27 total of thirty (30) days.

28 The servicing carrier shall proceed according to Arkansas Code  
29 §11-9-408(b) in canceling any binder or policy issued under the Plan,  
30 including the requisite notices to the employer and to the Workers  
31 Compensation Commission. All notices of cancellation shall state the hour  
32 and date at which the cancellation is to be effective. If, however, the  
33 employer procures other insurance or becomes self-insured as provided by  
34 law within the notice period, the cancellation date of the policy being  
35 cancelled shall be the effective date of the replacement coverage.

36 B. At least forty-five (45) days prior to the scheduled expiration date  
37 of a policy issued under the Plan, the servicing carrier shall notify the  
38 employer and the producer, in writing, and forwarding the Plan  
39 Administrator a copy, of the impending expiration and instruct the  
40 employer to request the servicing carrier to renew, provided the employer  
41 continues to be eligible for coverage under the Plan. The servicing  
42 carrier must forward the renewal proposal to the employer, with a copy to  
43 the producer and to the Plan Administrator. Within thirty (30) days after

1 receipt of the estimated annual or minimum deposit premium, the servicing  
2 carrier shall issue a policy, properly stamped "AR WCIP," to the employer  
3 and furnish a copy of the renewal Information Page to the Plan  
4 Administrator or its designee, to the producer, and to the Workers  
5 Compensation Commission. The renewal policy shall be effective upon  
6 expiration of the current policy, or as provided in Section 7 (B)(1),  
7 whichever is later.

8 C. A servicing carrier unwilling to renew an employer assigned to it  
9 shall notify in writing the employer, the producer, and the Plan  
10 Administrator at least forty-five (45) days prior to the scheduled  
11 expiration date of the policy giving the reasons therefor.

12 D. If any employer to which this Plan applies is dissatisfied with its  
13 servicing carrier, the employer may request reassignment by submitting in  
14 writing reasonably acceptable reasons for the request to the Plan  
15 Administrator at least thirty (30) days prior to the scheduled expiration  
16 date of the policy.

17 E. The employer may request cancellation at any time. Once coverage is  
18 no longer needed, the servicing carrier shall cancel the coverage pro rate  
19 as of the requested date for certain reasons. Typical or normal reasons  
20 for a request for pro rata cancellation include: (i) going out of  
21 business; (ii) no longer any workers' compensation exposure; (iii) the  
22 business is sold, or (iv) the business is being insured in the voluntary  
23 market.

#### 24 SECTION 7. PARTICIPATION

25 All insurers licensed to write and actually writing workers compensation  
26 insurance in this State are required to participate in this Plan and  
27 subscribe to the Articles of Agreement for this State. Any assessment  
28 that may be required of such carriers by reason of Ark. Code Ann.  
29 §23-67-204(a)(6) may be offset to the extent provided under the terms of  
30 the "Take Out Credit Program" Rating Plan of the National Council on  
31 Compensation Insurance as approved by the Commissioner.

32 Insurers which, prior to this Regulation, provided coverage on a direct  
33 assignment basis shall continue to be responsible for all obligations  
34 arising from such operations with no reinsurance available through the  
35 Articles of Agreement.

36 Commencing with the effective date of this Regulation, all direct  
37 assignment carriers shall be required to participate in the Articles of  
38 Agreement. All former direct assignment carriers shall, during policy  
39 year 1994, participate in the Pool, with respect to assessments and  
40 refunds, on a prorated basis which recognizes the number of months as a  
41 Pool member in relationship to the twelve month period.

42 Whenever the Plan Administrator, with the consent of the Commissioner,  
43 determines the capacity of servicing carriers to handle assignments made  
44 pursuant to this Plan and this Rule and Regulation falls below a level  
45 which is adequate to handle all the assignments being made, the  
46 Commissioner may, if an adequate number of servicing carriers have not

1 voluntarily made themselves available, appoint such number of qualified  
2 insurers as are reasonably necessary to service the needs of Arkansas  
3 employers under the Plan.

#### 4 SECTION 8. PLAN ADMINISTRATOR

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

7 B. The Plan Administrator (or any successor Plan Administrator or  
8 Administrators) shall open and continually operate a centrally - located  
9 office within the State of Arkansas reasonably and readily accessible to  
10 the offices of the Commissioner and at a location and with such staffing,  
11 equipment and facilities as shall be reasonably acceptable to the  
12 Commissioner as being adequate to provide a high quality level of service  
13 to the people of the State of Arkansas.

14 C. The Plan Administrator shall file with the Commissioner for approval  
15 operating rules, procedures, and guidelines consistent with the provisions  
16 of this Rule and Regulation for the administration and operation of the  
17 Plan. The Plan Administrator shall publish and make available to all  
18 insurers and producers the operating rules, procedures, performance  
19 standards, and guidelines for the administration and operation of the  
20 Plan. Further, the Plan Administrator shall file for approval its  
21 schedule of fees which it proposes to remit to Producers for policies  
22 written and services provided under the Plan.

23 D. The Plan Administrator shall have the following duties and  
24 responsibilities in addition to any others set forth in this Plan, all of  
25 which are subject to the ultimate control and oversight of the  
26 Commissioner:

- 27 (1) administering, managing, and enforcing the Plan subject to the  
28 provisions contained herein;
- 29 (2) determining the methodology and formula for making assignments  
30 to servicing carriers pursuant to Section 15 and securing the  
31 necessary information in order to make the assignments;
- 32 (3) processing assigned risk applications pursuant to the  
33 requirements of this Plan;
- 34 (4) establishing eligibility criteria for servicing carriers and  
35 appointing servicing carriers, each of which shall be subject  
36 to the prior approval of the Commissioner;
- 37 (5) establishing written performance requirements for servicing  
38 carriers, including, but not limited to:
  - 39 - verification of ongoing Plan eligibility of the employer
  - 40 - timely and accurate issuance of policies and endorsements

- 1 - timely and accurate filings with administrative agencies, as  
2 required
- 3 - maintenance of premiums on policies consistent with manual  
4 rules, rates, rating plans, and classifications
- 5 - timely and accurate completion and billing of final audits
- 6 - collection of premium
- 7 - claim services, including investigation, disability management,  
8 and medical cost control
- 9 - loss control services and safety information to encourage  
10 employers to make safety a part of their business
- 11 - Cooperation with the Commissioner and with the Workers  
12 Compensation Commission and Arkansas Department of Labor in  
13 carrying out and effectuating the safety mandates of Act 796  
14 of 1993 and such Rules and Regulations as may be promulgated  
15 thereunder
- 16 - payment of producer fees
- 17 - issuance of renewal proposals and non-renewal notices
- 18 - assurance of insured and insurer compliance with all terms  
19 and conditions of policy contract
- 20 - resolution of complaints and response to insured/producer  
21 inquiries
- 22 - reporting financial and statistical data to producers and  
23 insureds, as well as to the Commissioner
- 24 - requirement to consult with and keep insureds apprised of  
25 developments in incurred claim cases;
- 26 (6) keeping servicing carriers apprised of all required Performance  
27 Standards, monitoring servicing carrier performance and  
28 enforcing performance requirements and incentives;
- 29 (7) administering the dispute resolution mechanism as provided in  
30 Section 16;
- 31 (8) developing and implementing assigned risk operating rules and  
32 forms to the extent necessary to carry out the purposes of this  
33 Plan;
- 34 (9) informing the Commissioner of any insurer that is improperly  
35 not participating in this Plan; and
- 36 (10) monitoring the performance and operation of the Plan and  
37 initiating and requesting approval of amendments thereto as

1 appropriate.

2 The Plan Administrator shall also be responsible for determining the  
3 expenses for the operation of the Plan, exclusive of the Plan  
4 Administrator's expenses incurred in connection with responsibilities it  
5 has under the Articles, and shall assess each insurer participating in the  
6 Plan for those expenses on an equitable basis as determined by the Plan  
7 Administrator and approved by the Commissioner.

8 E. Commencing with the first quarter of 1994 and quarterly thereafter,  
9 the Plan Administrator shall file with the Commissioner a statement of  
10 expenses for the operation of the Plan and a report of the quarterly  
11 results of the servicing carriers under the Plan. The report shall  
12 include written and earned premium; paid and incurred losses;  
13 administration and servicing carrier allowances and remuneration; such  
14 other factors or elements as the Commissioner may from time to time  
15 determine; and effective for the first quarter of 1995, it shall include  
16 servicing carrier complaints reported by employers or producers. The  
17 statement and report shall be filed within ninety (90) days of the close  
18 of the applicable quarter. In addition, with regard to insurers  
19 previously authorized as direct assignment carriers, the Plan  
20 Administrator shall file annually on or before October 1 of the following  
21 year, a report of the annual results of such direct assignment carriers  
22 similar to that applicable to servicing carriers.

23 Further, and within ninety (90) days following the end of the fourth  
24 quarter of 1994, and annually thereafter, the Plan Administrator shall  
25 file with the Commissioner a performance review and evaluation of each  
26 servicing carrier in accord with the "Performance Standards and Procedures  
27 for Measuring Servicing Carrier Performance" in Section 12 and the  
28 criteria set forth in paragraph D.(5) above.

#### 29 SECTION 9. SERVICING CARRIERS

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

32 (1) Eligibility to Act As a Servicing Carrier. The Plan  
33 Administrator shall establish written requirements that insurers  
34 must meet in order to be eligible to act as a servicing carrier.  
35 Those requirements shall consider, among other things, the insurer's  
36 financial standing, availability of resources, length and quality of  
37 experience in the state writing workers compensation insurance,  
38 market share, and demonstrated compliance with the mandates of Ark.  
39 Code Ann. §§23-67-201 et. seq. From among those insurers that are  
40 eligible and have applied to act as a servicing carrier, the Plan  
41 Administrator shall appoint a sufficient number of servicing  
42 carriers as are needed to handle the assignments made pursuant to  
43 this Plan. The Plan Administrator may terminate the servicing  
44 carrier status, subject to the approval of the Commissioner, of any  
45 insurer that fails to meet the servicing carrier requirements on a  
46 continuing basis. During the first year this Plan is in effect, any  
47 insurer that is qualified as a servicing carrier under any similar  
48 Plan which was previously in effect in this State and continues to

1 be qualified as of the date this Plan takes effect will be deemed to  
2 be a qualified servicing carrier under this Plan.

3 (2) Quarterly Operations Report. Each servicing carrier shall  
4 provide a quarterly report to the Plan Administrator in such format  
5 and at such time as determined by the Plan Administrator. This  
6 report, among other things, shall provide information on the  
7 servicing carrier's operations related to Plan business in the  
8 following areas: underwriting, auditing, claims, loss control,  
9 premium collection, and customer service.

10 (3) Standards for Servicing Carrier Performance, Compensation, and  
11 Incentives. The Plan Administrator shall, with the approval of the  
12 Commissioner, establish written minimum levels of acceptable  
13 performance for servicing carriers and shall establish procedures  
14 for measuring servicing carrier performance. Servicing carriers  
15 shall manage losses in compliance with the performance standards  
16 established hereunder. The Plan Administrator shall also establish  
17 the compensation for servicing carriers which shall take into  
18 consideration, among other things, provisions for (a) rewarding  
19 servicing carriers for positive action targeted at reducing losses  
20 and costs, and (b) disincentives for inefficiencies and poor  
21 service, and (c) servicing carrier capacity. And, in accordance  
22 with Ark. Code § 23-67-204 (k) the performance plan shall provide  
23 that up to Thirty-three percent (33%) of the servicing  
24 carrier's remuneration shall be based upon how well or how poorly it  
25 complies with the standards for servicing carrier performance,  
26 including particularly, but not limited to, a review of collected  
27 premium as versus written premium and by review of loss ratios of  
28 its book of business and degree of improvement therein. Such  
29 compensation system shall be made effective with respect to and  
30 shall apply to all servicing carrier contracts effective on or after  
31 September 1, 1993. The Plan Administrator, as approved by the  
32 Commissioner, shall on an equitable and consistent basis provide  
33 that those monies that would otherwise have gone to servicing  
34 carriers that did not perform up to an acceptable standard shall be  
35 distributed amongst those servicing carriers that met or exceeded  
36 the performance standards.

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

44 (i) provide a level of service equal to that provided to  
45 employer-insureds in its voluntary workers compensation line of  
46 business and assure same by putting into effect internal  
47 administrative procedures which shall assure that such is the  
48 case;

49 (ii) maintain with the Commissioner a list of responsible

1 management personnel of the insurer qualified to make  
2 administrative decisions on the insurer's behalf concerning  
3 policies issued within the Plan;

4 (iii) keep the Commissioner continually advised of the address  
5 and telephone number of the insurer's office servicing the Plan  
6 on its behalf;

7 (iv) maintain a toll-free telephone number or numbers adequate  
8 to service the Plan and keep the Commissioner, employers, the  
9 Workers Compensation Commission, and producers continually  
10 apprised of same;

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

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

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

27 The written "Performance Standards and Procedures for Measuring  
28 Servicing Carrier Performance" hereunder are those currently in effect and  
29 and are those established by the Council. All of which said provisions  
30 are expressly incorporated herein and made a part hereof; such Performance  
31 Standards and Procedures for Measuring Servicing Carrier Performance may  
32 be amended and supplemented from time to time with the prior, express  
33 written approval of the Commissioner; provided, however, that no servicing  
34 carrier shall be subjected to the administrative fine or penalty provided  
35 for in subparagraph (7) hereof as to any particular performance standard  
36 of which it has not had at least three (3) month's notice. All servicing  
37 carriers shall be deemed to have Notice upon the Plan Administrator's  
38 receipt of approval from the Commissioner.

39 (5) Servicing carriers may, within the reasonable discretion of the  
40 Commissioner, join cooperatively with other licensed casualty  
41 insurers or general business corporations for the purpose of  
42 satisfying other duties as servicing carriers, including but not  
43 limited to policy issuance, claim review and payment, accounting and  
44 auditing and loss control and safety functions. Any insurer  
45 applying for approval as a servicing carrier, or any currently  
46 approved servicing carrier which has contracted or agreed to  
47 contract with a third party, shall make full disclosure of such

1 party and provide the Plan Administrator and Commissioner with all  
2 such information regarding same as they may request. All such third  
3 party contractual arrangements and amendments thereof shall be  
4 subject to review, examination and approval or disapproval of the  
5 Commissioner upon request. No such contract of a servicing carrier  
6 with another entity will in any manner lessen the duties and  
7 obligations of the servicing carriers or the standards by which  
8 their performance is to be measured.

9 (6) Monitoring and Enforcement. The Plan Administrator, on behalf  
10 of the Commissioner, shall monitor and review servicing carrier  
11 performance by (1) reviewing the quarterly and annual reports; (2)  
12 requiring and reviewing self-audits; (3) conducting on-site audits  
13 of all servicing carriers no less often than once per triennium;  
14 however, the Commissioner may at his own initiative direct the Plan  
15 Administrator to conduct an audit of any servicing carrier whenever  
16 circumstances merit such audit; and (4) reviewing any other  
17 information available that relates to the servicing carrier. The  
18 Plan Administrator shall require servicing carriers to maintain  
19 desired performance levels and will take appropriate remedial action  
20 where necessary including, but not limited to the remuneration  
21 adjustment program discussed above, and the establishment and  
22 administration of a progressive discipline program which may lead to  
23 terminating an insurer's servicing carrier status. In order to  
24 fulfill its responsibilities under this Plan, the Plan Administrator  
25 shall have the right, itself or through authorized representatives,  
26 at all reasonable times during regular business hours, to audit and  
27 inspect the books and records of any servicing carrier with respect  
28 to any policies, claims, or related documents coming within the  
29 purview of this Plan, the Articles, or the reinsurance mechanism.  
30 Each servicing carrier shall, further, have the responsibility of  
31 reimbursing the Commissioner for any reasonable expenses of travel  
32 and lodging, including meals, which he or any of his designees may  
33 incur in carrying out their duty of monitoring and enforcement.

34 (7) In addition to the adjustments to remuneration of servicing  
35 carriers as discussed above and the progressive discipline  
36 procedure, servicing carriers are subject to the imposition by the  
37 Commissioner, after notice and hearing, of administrative fine or  
38 penalty in the sum of not more than One Thousand Dollars (\$1,000.00)  
39 for each violation of standard. Violations of standards of  
40 performance shall be reviewed annually by the Plan Administrator and  
41 the Commissioner and determined cumulatively under each separate  
42 performance standard.

#### 43 SECTION 10. INTERSTATE ASSIGNMENTS

44 A. Voluntary Coverage. Any employer assigned under this Plan and  
45 desiring workers' compensation insurance for operations in states other  
46 than Arkansas may request its servicing carrier to furnish such insurance  
47 in such additional states. Workers' compensation insurance in such  
48 additional states may be written by the servicing carrier on a voluntary  
49 basis and in accordance with the law, rates, rules, classifications, and  
50 regulations applicable to the voluntary workers' compensation market in



1 those states.

2 B. Assigned Risk Coverage. (1) "Similar" Assigned Risk States. If the  
3 servicing carrier does not wish to provide coverage in the additional  
4 states on a voluntary basis, if those states have a Workers Compensation  
5 Insurance Plan that is similar to this Plan and if such other Plan allows  
6 employers applying for coverage thereunder to obtain coverage for their  
7 operations in Arkansas, then the servicing carrier must provide assigned  
8 risk coverage in such additional states as follows:

9 (1) A servicing carrier providing such insurance shall collect all  
10 premiums due on operations located in such other states. The  
11 effective date of such insurance in such additional states  
12 shall be the day after premium is received; however, in the  
13 event coverage in such additional states is on an "if any"  
14 basis, the effective date of such coverage shall be the day  
15 following receipt of an acceptable request for such insurance  
16 by the carrier. A copy of the policy Information Page and all  
17 endorsements, properly stamped "AR WCIP," shall be submitted to  
18 the appropriate Plan Administrator having jurisdiction in the  
19 state where the coverage is effected.

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

24 (3) The servicing carrier must also be a signatory to an agreement  
25 providing reinsurance for residual market risks similar to the  
26 Articles of Agreement in each state where the coverage will be  
27 provided.

28 A servicing carrier unable to provide insurance for an employer in  
29 additional states in accordance with this Section 13.B. or unwilling to  
30 write voluntary coverage in accordance with Section 13.A., shall refer the  
31 request to the Plan Administrator which shall re-assign the employer to a  
32 servicing carrier or carriers that is/are able to provide coverage in  
33 accordance with this Section 13.A. and Section 13.B..

34 (2) All Other States. If the servicing carrier does not wish to  
35 provide coverage in an additional state on a voluntary basis, and if the  
36 state in question does not have a Workers Compensation Insurance Plan that  
37 is similar to this Plan, then the servicing carrier must provide coverage  
38 for operations of an Arkansas employer in such additional state IF AND  
39 ONLY IF:

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

44 b. the employer has made application to either an "unsimilar"  
45 assigned risk plan, or to either a competitive or mandatory state  
46 workers compensation fund in such state and has been declined for

1 coverage.

2 In the event coverage in another state cannot be obtained in the  
3 fashion as set forth above, then the services as rendered by employees of  
4 the Arkansas employer shall be deemed to be services rendered pursuant to  
5 a contract of "employment in this State" as provided by Ark. Code Ann.  
6 §11-9-102(12) and as amended by Section 2 of Act 796 of 1993, and the  
7 servicing carrier shall provide coverage for such operations under this  
8 Plan and under the mandate of Ark. Code Ann. §11-9-404(a)(1); PROVIDED,  
9 HOWEVER, that in the event any employee of any such employer incurs an  
10 injury or occupational disease compensable under the law of such other  
11 State, elects to recover under such laws and is finally successful in so  
12 doing, the servicing carrier shall be entitled to recoup from such  
13 employer the additional premium, if any, that would have been billed to  
14 that employer for the services of that employee in that other State by:  
15 (i) either the risk plan or competitive or monopolistic fund operating in  
16 such State; or (ii) a licensed workers compensation insurer legally  
17 providing coverage to an employer in such State pursuant to the laws  
18 thereof. Such carrier recouping premium in this manner shall be entitled  
19 to recoup premium for a period of coverage equal to the period of time the  
20 injured employee performed services in such State (subject to the maximum  
21 differential, if any, between the Arkansas rates and the other State rates  
22 for a period of one policy year) and shall be entitled to bill and collect  
23 from the employer the said premiums as premium due hereunder and subject  
24 to the cancellation procedures set forth in Section 9 hereof.

25 C. Foreign Employers. (1) From Similar Assigned Risk State.  
26 Employers who make application for workers' compensation insurance under  
27 another state's Workers' Compensation Insurance Plan may purchase coverage  
28 for operations in Arkansas without meeting the application requirements of  
29 this Plan, provided: (1) the employer qualifies for such insurance under  
30 the other state's Plan; (2) the employer is in good faith entitled to  
31 insurance under this Plan; (3) the other state's Plan is similar to this  
32 Plan; (4) that Plan also provides for interstate assignments; and (5) the  
33 payroll for the employer's operation in this State is not greater than the  
34 payroll in the other state.

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

39 The Administrator of the other Plan is authorized to assign  
40 employers with operations in Arkansas to the other Plan's servicing  
41 carriers subject to the following conditions:

42 (1) The assigned carrier must be a signatory to the Articles of  
43 Agreement in this State. In addition, if the payroll for the  
44 employer's operation in this State is greater than \$250,000, the  
45 assigned carrier must also be a servicing carrier in this State.

46 (3) The other state's Plan must give the Plan Administrator in this  
47 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 11. 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 12. 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 servicing carriers. These procedures shall provide for the  
22 random distribution of employers based on the amount of estimated premium  
23 in the Plan, so far as practicable. The procedures shall also define  
24 those circumstances where the Plan Administrator will have the discretion  
25 to override the random selection process and shall account for the  
26 variations necessitated by the "striking procedure" set forth at Section 6  
27 hereinabove.

#### 28 SECTION 13. DISPUTE RESOLUTION PROCEDURE

29 Any person affected by the operation of the Plan including, but not  
30 limited to, participating companies, employers, producers, and servicing  
31 carriers, who may have a dispute with respect to any aspect of the Plan,  
32 including rating and classification, eligibility, and auditing disputes  
33 and any dispute arising under the Articles of Agreement, may seek a review  
34 of the matter by the Plan Administrator by setting forth in writing with  
35 particularity the nature of the dispute, the parties to the dispute, the  
36 relief sought and the basis thereof. The Plan Administrator, as designee  
37 of the Commissioner, may secure such additional information as it deems  
38 necessary to make a decision and shall in the instance of disputes  
39 involving, comply with all requirements of due process and Ark. Code Ann.  
40 §23-67-119(3) and the Arkansas Appeals Board Objectives and Rules as  
41 approved by the Commissioner.

42 Appeals from employers and insurers on Plan matters regarding employer  
43 disputes shall be within the jurisdiction of the mechanism established to  
44 handle such appeals under the applicable rating law i.e. Ark. Code §  
45 23-67-119(3). All other disputes shall be handled as follows:

46 (1) If the dispute relates to the general operation of the Plan,  
47 excluding individual employer disputes as noted above and those

1 arising under the Articles of Agreement, the Plan Administrator will  
2 review the matter and render a written decision with an explanation of  
3 the reasons for the decision within thirty (30) days after receipt of  
4 all the information necessary to make the decision. Any party  
5 affected by a decision made by the Plan Administrator may seek a  
6 review by a committee appointed by the President of the National  
7 Council on Compensation Insurance for such purpose. Such committee  
8 shall consist of three (3) senior officers of the Council. A request  
9 for a review by such committee must be made to the Plan Administrator  
10 in writing within thirty (30) days of the date of the Plan  
11 Administrator's decision. Any party affected by the decision of such  
12 committee may seek a de novo review by the Commissioner by requesting  
13 such review, in writing, within thirty (30) days after the date of  
14 such decision.

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

22 (2) Except as provided below, if the dispute arises under the  
23 Articles of Agreement, the Administrator designated under the Articles  
24 of Agreement shall first review the matter and render a written  
25 decision with an explanation of the reasons for the decision within  
26 thirty (30) days after receipt of all the information necessary to  
27 make the decision. Any party affected by the decision may seek a  
28 review by the Board of Governors established under the Articles by  
29 requesting such review, in writing, within thirty (30) days of the  
30 date of the decision by the Administrator under the Articles of  
31 Agreement. The Board of Governors must then review the matter and  
32 render its written decision pursuant to the procedures set forth in  
33 the Articles of Agreement. Any party affected by a decision of the  
34 Board of Governors may seek a de novo review by the Commissioner by  
35 requesting such a review in writing within thirty (30) days of the  
36 date of the Board of Governors' decision.

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

#### 41 SECTION 14. SELF-FUNDED PLAN

42 It is ultimately essential for maintaining the viability of the Plan  
43 to establish and maintain rates at a level that will permit the Plan to  
44 operate as a self-funded mechanism. The Plan Administrator shall maintain  
45 necessary ratemaking data in order to permit the actuarial determination  
46 of rates and rating plans appropriate for the business insured through the  
47 Plan. All assigned carriers are required to report their experience on  
48 business written under the Plan to the Administrator in a format  
49 prescribed by the Council. It is the responsibility of the Plan

1 Administrator to monitor both rate adequacy and Plan results. The Plan  
2 Administrator shall notify the Commissioner if excessive losses are  
3 indicated to enable the Commissioner to take corrective action.

#### 4 SECTION 15. SMALL DEDUCTIBLE POLICY OPTION

5 The Commissioner deems a small deductible policy option to be  
6 "feasible" within the meaning of Ark. Code Ann. §11-9-813(d), and,  
7 accordingly, a Small Deductible Policy Rating Plan which shall be  
8 applicable to both the voluntary market and to the WCIP shall be made  
9 effective, under which each employer shall have the option, in accordance  
10 with the dictates of Ark. Code Ann. §11-9-813, of applying for coverages  
11 which incorporate deductible amounts of no less than \$1,000 per incident  
12 and further deductibles in further increments of \$500 each up to a maximum  
13 of \$5,000 per incident. The Plan Administrator shall develop an  
14 appropriate application incorporating the deductible option and policy  
15 form, along with an actuarially sound premium adjustments for submission  
16 to and approval by the Commissioner. The Commissioner hereby determines  
17 under the dictates of Ark. Code Ann. §11-9-813(d), however, that it is not  
18 "feasible" to require insurers or the Plan Administrator and servicing  
19 carriers to ignore claim frequency and/or severity if losses happen to be  
20 within the deductible limit chosen by an employer, and, accordingly, there  
21 shall be no prohibition against insurers, the Plan Administrator, or  
22 servicing carriers using true loss data, including frequency and severity  
23 of losses even within deductibles, for purposes of experience rating.

#### 24 SECTION 16. OTHER STANDARDS AND PENALTIES

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

29 B. Any servicing carrier who fails to comply with the requirements of  
30 Section 12 of this Rule and Regulation, as reported to the Commissioner by  
31 the Plan Administrator, may have their designations to act in such  
32 capacity hereunder suspended or revoked upon notice and hearing pursuant  
33 to Arkansas Code Annotated §§ 23-61-301, et seq.

34 C. No servicing carrier insuring an employer through the Plan may utilize  
35 any information gained through its administrative services for the purpose  
36 of securing other insurance business from such employer. No such carrier  
37 shall share or reveal any such proprietary information with or to any of  
38 its agents or brokers, with or to any other carrier, or, if it is a direct  
39 writer, with or to any of its in-house marketing personnel. Violation of  
40 this prohibition shall be considered an Unfair Method of Competition in  
41 violation of the Trade Practices Act.

42 D. No licensed agent, broker or solicitor or any insurer (whether or not  
43 a servicing carrier) may knowingly submit an offer of workers'  
44 compensation insurance coverage to an employer on a monoline basis on a  
45 rating plan that has not been previously approved by the Commissioner, nor  
46 shall any such person or entity make any offer of workers' compensation  
47 insurance in combination or coordination with other property and/or

1 casualty coverages or limits which are not desired by the employer, nor  
2 shall such person or entity apply its filed and approved rates or rating  
3 plans (including all applicable discounts or credits) to such employer in  
4 an unfairly discriminatory manner. Any person or entity determined to  
5 have knowingly violated this prohibition shall be deemed guilty of an  
6 unfair or deceptive act or practice in the business of insurance as  
7 provided at Ark. Code Ann. §§23-66-205 et. seq.

8 SECTION 17. SEVERABILITY

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