

# ARKANSAS REGISTER

FILED

## Transmittal Sheet

JAN 27 1997



SHARON PRIEST  
SECRETARY OF STATE

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

For Office Use Only: Effective Date 2/6/97 Code Number 054.00.97--001

Name of Agency Arkansas Insurance Department

Department Legal Division

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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.

Roger McNeil  
Signature

(501) 371-2820  
Phone Number

Associate Counsel  
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1-3-97  
Date



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SHARON FINEST  
SECRETARY OF STATE  
STATE OF ARKANSAS

March 3, 1997

BY \_\_\_\_\_

BULLETIN NO. 2-97

TO: ALL LICENSED CASUALTY INSURERS, THE ARKANSAS WORKERS' COMPENSATION COMMISSION, THE NATIONAL COUNCIL ON COMPENSATION INSURANCE, INSURER AND AGENT TRADE ASSOCIATIONS, AND OTHER INTERESTED PARTIES

FROM: ARKANSAS INSURANCE DEPARTMENT

SUBJECT: ADOPTION OF REVISED RULE AND REGULATION 54, "THE ARKANSAS WORKERS' COMPENSATION INSURANCE PLAN"

The Department has adopted revised Rule and Regulation 54 effective January 1, 1997. The major changes made to the proposed rule following last December's public hearing and incorporated into the final rule are:

1) The "Definitions" section has been revamped. The order of the various definitions has been reorganized. Various definitions have been added, deleted, and amended.

2) The following sections: Section 5 - Eligibility For Plan; Section 6 - Procedure For Application; Section 7 - Binding Coverage, Assignments and Policy Issue; and Section 8 - Plan Rates-Including Alternate Preferred Plan, have been compiled into a completely new Section 5 - Rules For Eligibility and Assignment.

Direct your inquiries or requests for Rule and Regulation 54 "The Arkansas Workers' Compensation Insurance Plan" to the Legal Division at (501) 371-2820.

MIKE PICKENS  
INSURANCE COMMISSIONER

054.00.97--001

RULE AND REGULATION 54  
ARKANSAS WORKERS'  
COMPENSATION INSURANCE PLAN

**FILED**

JAN 27 1997

BY SHARON PRIEST  
SECRETARY OF STATE

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28 SECTION 1. AUTHORITY

30 This Rule and Regulation is adopted and promulgated by the Insurance  
31 Commissioner for the State of Arkansas ("Commissioner") pursuant to the  
32 authority vested in the Commissioner by Act 561 of 1991 [codified at  
33 Arkansas Code §§ 23-67-201 et seq.]; Act 1155 of 1993 [An Act amending  
34 Arkansas Code §§ 23-67-201 et seq.]; Act 796 of 1993 [An Act amending  
35 Chapter 9 of Title 11, Arkansas Code]; Act 1269 of 1993 [An Act  
36 supplementing Chapter 67 of Title 23, Arkansas Code]; and by Arkansas Code  
37 §§23-61-108, 23-67-219, 23-67-310, 23-79-109, and 25-15-201 et seq.

39 SECTION 2. EFFECTIVE DATE

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

44 SECTION 3. PURPOSE

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

53 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

12 B. "Articles of Agreement" or "Articles" The reinsurance mechanism  
13 authorized under this Plan to provide reinsurance to the servicing  
14 carriers on employers assigned to them under this Plan, which said  
15 agreement and any amendments thereto shall be provided to and approved by  
16 the Commissioner but which, in cases of conflict between them and this  
17 Rule and Regulation, shall be subordinate to this Rule and Regulation.

18

19 C. "Assigned Carrier" or "Servicing Carrier" The insurer authorized to  
20 receive Plan assignments and provide coverage to eligible employers on  
21 behalf of those participating companies subscribing to the Articles of  
22 Agreement incorporated as a part of the Plan in this state.

23

24 D. "Collected Premium" The gross direct premium charged and  
25 physically collected and receipted for all employers subject to this Plan.

26

27 E. "Commissioner" The Insurance Commissioner for the State of Arkansas.

28

29 F. "Employer" Any business organization or enterprise that is required  
30 by statute to maintain workers compensation insurance in this State. The  
31 term shall include any business organizations or enterprises that are  
32 affiliated as a result of common management or common ownership.

33

34 G. "National Council on Compensation Insurance, Inc." or "NCCI" The  
35 rating organization or advisory organization licensed in this State to  
36 make and file rates, rating values, classifications, and rating plans for  
37 workers' compensation insurance.

38

39 H. "Net Premiums Written" The gross direct premiums charged less all  
40 premiums (except dividends and savings refunded under participating  
41 policies) returned to insureds for all Workers Compensation and  
42 Occupational Disease Insurance, exclusive of premiums for employers  
43 subject to this Plan, and for employers written under the National Defense  
44 Projects Rating Plan and under excess policies.

45

46 I. "Plan" or "WCIP" The Arkansas Workers' Compensation Insurance Plan.

47

48 J. "Plan Administrator" Such organization or organizations to which the  
49 responsibility for administering the affairs of the Plan may, from time to  
50 time, be delegated, including but not limited to such functions and duties  
51 as rates, forms, and statistics.

52

53 K. "Premium in Dispute" A workers' compensation insurance premium  
54 obligation in which a bona fide dispute exists only if the employer or its

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

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

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

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

43  
44 O. "Workers' Compensation Insurance"

45  
46 (a) Statutory workers' compensation and occupational disease liability  
47 insurance including insurance for liability under the Longshore and  
48 Harbor Workers' Compensation Act, as amended, and the Federal Coal  
49 Mine Health and Safety Act of 1969, as amended;

50  
51 (b) Employers liability insurance written in connection with a workers'  
52 compensation policy; and

53  
54 (c) Such other coverages as approved by the Commissioner.

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2 SECTION 5. RULES FOR ELIGIBILITY AND ASSIGNMENT  
3

4 A. Good Faith.  
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6 The following rules will govern the insuring of employers who are in "good  
7 faith entitled to workers' compensation insurance" as defined herein, but  
8 who are unable to procure such insurance in a regular manner.  
9 For purposes of this Plan, the offer of any reasonable rating plan  
10 approved for use in this jurisdiction shall be deemed an offer of  
11 insurance in a regular manner. Any dispute arising hereunder shall be  
12 subject to the dispute resolution procedure provided in this Plan.  
13

14 (1) Good faith rules of eligibility.  
15

16 Good faith will be presumed in the absence of clear and convincing  
17 evidence to the contrary. An employer is not in good faith entitled to  
18 insurance if any of the following circumstances exist at the time of  
19 application or thereafter, or other evidence exists that such employer is  
20 not in good faith entitled to insurance.  
21

22 (a) At the time of application, a self-insured employer is aware  
23 of pending bankruptcy proceedings, insolvency, cessation of  
24 operations, or conditions that would probably result in  
25 occupational disease or cumulative injury claims from  
26 exposure incurred while the employer was self-insured.  
27

28 (b) The employer, has failed or refused to comply with all  
29 effective laws, rules, or regulations relative to the  
30 welfare, health and safety of employees or loss control  
31 requirements; does not allow reasonable access to the  
32 insurer for audit or inspection under the policy; or does  
33 not comply with any other policy obligations.  
34

35 (c) The employer has an outstanding workers' compensation  
36 insurance premium obligation or other monetary policy  
37 obligation on previous workers' compensation insurance that  
38 is not subject to a bona fide dispute.  
39

40 (d) The employer, its representative, or the producer knowingly  
41 fails to comply with Plan procedures; or knowingly makes a  
42 material misrepresentation on the application by omission or  
43 otherwise, including, but not limited to, the following:  
44 estimated payroll, offers of workers' compensation  
45 insurance, nature of business, name or ownership of  
46 business, previous insurance history, or an outstanding  
47 workers' compensation insurance premium obligation or other  
48 monetary policy obligation of the employer.  
49

50 B. Declinations  
51

52 Within sixty (60) days preceding the date of application, the employer  
53 must have applied for workers' compensation coverage and have been  
54 rejected by at least two (2) insurers, specifically including, where  
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1 applicable, the insurer providing coverage to the employer at the time of  
2 application.

3

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

6

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

12

### 13 C. Forms and Rates

14

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

19

### 20 D. Securing a Requested Effective Date

21

22 The employer or its representative shall forward an application to the  
23 Plan Administrator using one of the submission methods established by the  
24 Plan Administrator.

25

26 The employer or its representative may request an effective date not later  
27 that sixty (60) days from the date of application; however, such requested  
28 effective date shall be the later of the following options:

29

- 30 (1) 12:01 a.m. on the date following receipt by the Plan  
31 Administrator of a complete and eligible application,
- 32 (2) the date of expiration of existing coverage, or
- 33 (3) a date the employer requested.

34

35 If the producer forwards via U.S. mail a signed application to the Plan  
36 Administrator with a check payable to the Plan Administrator for the  
37 estimated annual or initial deposit premium, coverage will be bound at  
38 12:01 a.m. on the day following the postmark on the envelope in which the  
39 application is mailed, including the estimated annual or deposit premium,  
40 or the expiration of existing coverage. If U.S. mail is used and/or there  
41 is no postmark, or if the application does not contain the required  
42 information as described in the Assigned Risk Supplement to the Basic  
43 Manual, provisions for securing a requested effective date as stated above  
44 and rules for binding coverage as stated in paragraph (I) below shall  
45 apply.

46

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

51

52 In order to promote competition among servicing carriers and to improve  
53 the service thereof, the employer applying for initial coverage or renewal  
54 coverage within the Plan may strike up to a maximum of six (6) servicing

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1 carriers from the list of active-eligible servicing carriers then  
2 maintained by the Commissioner and the Plan Administrator as provided on  
3 the Appendix A to the application.

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5 E. Application Review

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7 Upon receipt of the application, the Plan Administrator shall review it  
8 for eligibility and completeness. The Plan Administrator may request  
9 additional information at its discretion to establish eligibility, to  
10 assign appropriate classification codes, to calculate applicable premium,  
11 and to otherwise appropriately process the application. Such information  
12 may include tax documentation, ownership information, contracts, or any  
13 other information deemed necessary to process the application. The  
14 employer and/or its representative shall provide this  
15 information/documentation, or provide an acceptable explanation for  
16 failure to provide the requested items within the timeframe established by  
17 the Plan Administrator.

18

19 Incomplete applications received by the Plan Administrator may, at the  
20 discretion of the Plan Administrator, be returned to the employer or its  
21 representative for completion or, with notice to the employer or its  
22 representative, may be retained by the Plan Administrator pending receipt  
23 of further information. Failure to comply in a timely manner with a  
24 request from the Plan Administrator may result in the rejection of the  
25 application.

26

27 F. Additional States Coverage

28

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

37

38 G. Premium Obligations

39

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

44

45 H. Initial or Deposit Premium

46

47 After the application has been reviewed and eligibility has been  
48 determined, the Plan Administrator shall calculate the initial or deposit  
49 premium (depending on state payment options) and inform the employer, its  
50 representative, or the producer of the applicable premium, using the  
51 submission options identified by the Plan Administrator.

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53 Note: See individual state Special Rules pages of the Basic Manual for  
54 Workers' Compensation and Employers' Liability Insurance for applicable

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1 initial or deposit premium rules.

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3 I. Binding of Coverage

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5 The producer or employer must submit the total required initial or deposit  
6 premium to the Plan Administrator, using one of the submission methods  
7 approved by the Plan Administrator. The required initial or deposit  
8 premium must be received within the timeframe established by the Plan  
9 Administrator in order for coverage to be bound on the requested effective  
10 date.

11

12 The effective date on the binder will be the secured effective date  
13 determined in the section entitled "Securing a Requested Effective Date"  
14 only if all of the following occur:

15

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

21

22 Coverage will not be bound by the Plan Administrator without a complete  
23 signed application and receipt of the appropriate deposit or initial  
24 premium.

25

26 J. Binder Information

27

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

32

33 K. Reassignment

34

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

41

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

46

47 L. Producer Information

48

- 49 (1) Producer Fee

50

51 The servicing carrier shall pay a fee to the licensed producer designated  
52 by the employer on new and renewal policies upon payment and receipt of  
53 premium due under the policy. The producer fee shall be based on the  
54 state standard premium charged and collected, and will be paid at the rate

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1 filed by the Plan Administrator with the Commissioner.

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3 (2) Producer Changes

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

9

10 M. Additional Coverages

11

12 Additional coverages may be available to the employer through the  
13 servicing carrier. See the WCIP Supplement printed at the end of the Plan  
14 for those coverages available in each state.

15

16 N. Policy Term

17

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

22

23 SECTION 6. CANCELLATION AND RENEWAL

24

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

28

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

31

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

35

36 3) Where the employer refuses to allow the servicing carrier  
37 reasonable access to its facilities or to its files and records for  
38 audit or inspection; or

39

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

42

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

49

50 The servicing carrier shall proceed according to Arkansas Code  
51 §11-9-408(b) in canceling any binder or policy issued under the Plan,  
52 including the requisite notices to the employer and to the Workers  
53 Compensation Commission. All notices of cancellation shall state the hour  
54 and date at which the cancellation is to be effective. If, however, the

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1 employer procures other insurance or becomes self-insured as provided by  
2 law within the notice period, the cancellation date of the policy being  
3 cancelled shall be the effective date of the replacement coverage.

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

20

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

25

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

31

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

39

#### 40 SECTION 7. PARTICIPATION

41

42 All insurers licensed to write and actually writing workers compensation  
43 insurance in this State are required to participate in this Plan and  
44 subscribe to the Articles of Agreement for this State. Any assessment  
45 that may be required of such carriers by reason of Ark. Code Ann.  
46 §23-67-204(a)(6) may be offset to the extent provided under the terms of  
47 the "Take Out Credit Program" Rating Plan of the National Council on  
48 Compensation Insurance as approved by the Commissioner.

49

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

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1 Commencing with the effective date of this Regulation, all direct  
2 assignment carriers shall be required to participate in the Articles of  
3 Agreement. All former direct assignment carriers shall, during policy  
4 year 1994, participate in the Pool; with respect to assessments and  
5 refunds, on a prorated basis which recognizes the number of months as a  
6 Pool member in relationship to the twelve month period.

7

8 Whenever the Plan Administrator, with the consent of the Commissioner,  
9 determines the capacity of servicing carriers to handle assignments made  
10 pursuant to this Plan and this Rule and Regulation falls below a level  
11 which is adequate to handle all the assignments being made, the  
12 Commissioner may, if an adequate number of servicing carriers have not  
13 voluntarily made themselves available, appoint such number of qualified  
14 insurers as are reasonably necessary to service the needs of Arkansas  
15 employers under the Plan.

16

17

#### 18 SECTION 8. PLAN ADMINISTRATOR

19

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

22

23 B. The Plan Administrator (or any successor Plan Administrator or  
24 Administrators) shall open and continually operate a centrally - located  
25 office within the State of Arkansas reasonably and readily accessible to  
26 the offices of the Commissioner and at a location and with such staffing,  
27 equipment and facilities as shall be reasonably acceptable to the  
28 Commissioner as being adequate to provide a high quality level of service  
29 to the people of the State of Arkansas.

30

31 C. The Plan Administrator shall file with the Commissioner for approval  
32 operating rules, procedures, and guidelines consistent with the provisions  
33 of this Rule and Regulation for the administration and operation of the  
34 Plan. The Plan Administrator shall publish and make available to all  
35 insurers and producers the operating rules, procedures, performance  
36 standards, and guidelines for the administration and operation of the  
37 Plan. Further, the Plan Administrator shall file for approval its  
38 schedule of fees which it proposes to remit to Producers for policies  
39 written and services provided under the Plan.

40

41 D. The Plan Administrator shall have the following duties and  
42 responsibilities in addition to any others set forth in this Plan, all of  
43 which are subject to the ultimate control and oversight of the  
44 Commissioner:

45

46 (1) administering, managing, and enforcing the Plan subject to the  
47 provisions contained herein;

48

49 (2) determining the methodology and formula for making assignments  
50 to servicing carriers pursuant to Section 15 and securing the  
51 necessary information in order to make the assignments;

52

53 (3) processing assigned risk applications pursuant to the  
54 requirements of this Plan;

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- (4) establishing eligibility criteria for servicing carriers and appointing servicing carriers, each of which shall be subject to the prior approval of the Commissioner;
  
- (5) establishing written performance requirements for servicing carriers, including, but not limited to:
  - verification of ongoing Plan eligibility of the employer
  - timely and accurate issuance of policies and endorsements
  - timely and accurate filings with administrative agencies, as required
  - maintenance of premiums on policies consistent with manual rules, rates, rating plans, and classifications
  - timely and accurate completion and billing of final audits
  - collection of premium
  - claim services, including investigation, disability management, and medical cost control
  - loss control services and safety information to encourage employers to make safety a part of their business
  - Cooperation with the Commissioner and with the Workers Compensation Commission and Arkansas Department of Labor in carrying out and effectuating the safety mandates of Act 796 of 1993 and such Rules and Regulations as may be promulgated thereunder
  - payment of producer fees
  - issuance of renewal proposals and non-renewal notices
  - assurance of insured and insurer compliance with all terms and conditions of policy contract
  - resolution of complaints and response to insured/producer inquiries
  - reporting financial and statistical data to producers and insureds, as well as to the Commissioner
  - requirement to consult with and keep insureds apprised of developments in incurred claim cases;
  
- (6) keeping servicing carriers apprised of all required Performance Standards, monitoring servicing carrier performance and enforcing performance requirements and incentives;

- 1 (7) administering the dispute resolution mechanism as provided in  
2 Section 16;
- 3
- 4 (8) developing and implementing assigned risk operating rules and  
5 forms to the extent necessary to carry out the purposes of this  
6 Plan;
- 7
- 8 (9) informing the Commissioner of any insurer that is improperly  
9 not participating in this Plan; and
- 10
- 11 (10) monitoring the performance and operation of the Plan and  
12 initiating and requesting approval of amendments thereto as  
13 appropriate.
- 14

15 The Plan Administrator shall also be responsible for determining the  
16 expenses for the operation of the Plan, exclusive of the Plan  
17 Administrator's expenses incurred in connection with responsibilities it  
18 has under the Articles, and shall assess each insurer participating in the  
19 Plan for those expenses on an equitable basis as determined by the Plan  
20 Administrator and approved by the Commissioner.

21  
22 E. Commencing with the first quarter of 1994 and quarterly thereafter,  
23 the Plan Administrator shall file with the Commissioner a statement of  
24 expenses for the operation of the Plan and a report of the quarterly  
25 results of the servicing carriers under the Plan. The report shall  
26 include written and earned premium; paid and incurred losses;  
27 administration and servicing carrier allowances and remuneration; such  
28 other factors or elements as the Commissioner may from time to time  
29 determine; and effective for the first quarter of 1995, it shall include  
30 servicing carrier complaints reported by employers or producers. The  
31 statement and report shall be filed within ninety (90) days of the close  
32 of the applicable quarter. In addition, with regard to insurers  
33 previously authorized as direct assignment carriers, the Plan  
34 Administrator shall file annually on or before October 1 of the following  
35 year, a report of the annual results of such direct assignment carriers  
36 similar to that applicable to servicing carriers.

37  
38 Further, and within ninety (90) days following the end of the fourth  
39 quarter of 1994, and annually thereafter, the Plan Administrator shall  
40 file with the Commissioner a performance review and evaluation of each  
41 servicing carrier in accord with the "Performance Standards and Procedures  
42 for Measuring Servicing Carrier Performance" in Section 12 and the  
43 criteria set forth in paragraph D.(5) above.

#### 44 45 SECTION 9. SERVICING CARRIERS

46  
47 With respect to the servicing carriers appointed by the Plan Administrator  
48 and approved by the Commissioner, the following shall apply:

- 49
- 50 (1) Eligibility to Act As a Servicing Carrier. The Plan  
51 Administrator shall establish written requirements that insurers  
52 must meet in order to be eligible to act as a servicing carrier.  
53 Those requirements shall consider, among other things, the insurer's  
54 financial standing, availability of resources, length and quality of  
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1 experience in the state writing workers compensation insurance,  
2 market share, and demonstrated compliance with the mandates of Ark.  
3 Code Ann. §§23-67-201 et. seq. From among those insurers that are  
4 eligible and have applied to act as a servicing carrier, the Plan  
5 Administrator shall appoint a sufficient number of servicing  
6 carriers as are needed to handle the assignments made pursuant to  
7 this Plan. The Plan Administrator may terminate the servicing  
8 carrier status, subject to the approval of the Commissioner, of any  
9 insurer that fails to meet the servicing carrier requirements on a  
10 continuing basis. During the first year this Plan is in effect, any  
11 insurer that is qualified as a servicing carrier under any similar  
12 Plan which was previously in effect in this State and continues to  
13 be qualified as of the date this Plan takes effect will be deemed to  
14 be a qualified servicing carrier under this Plan.

15  
16 (2) Quarterly Operations Report. Each servicing carrier shall  
17 provide a quarterly report to the Plan Administrator in such format  
18 and at such time as determined by the Plan Administrator. This  
19 report, among other things, shall provide information on the  
20 servicing carrier's operations related to Plan business in the  
21 following areas: underwriting, auditing, claims, loss control,  
22 premium collection, and customer service.

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

51  
52 (4) Each servicing carrier shall continually employ such number of  
53 qualified administrative personnel and dedicate such equipment and  
54 facilities to the administration of the Arkansas Workers'  
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1 Compensation Insurance Plan as the Commissioner, in his reasonable  
2 discretion, deems adequate to service the needs of the Plan; and,  
3 further, the standards for servicing carrier performance shall  
4 include a requirement that each of them shall:  
5

6 (i) provide a level of service equal to that provided to  
7 employer-insureds in its voluntary workers compensation line of  
8 business and assure same by putting into effect internal  
9 administrative procedures which shall assure that such is the  
10 case;

11  
12 (ii) maintain with the Commissioner a list of responsible  
13 management personnel of the insurer qualified to make  
14 administrative decisions on the insurer's behalf concerning  
15 policies issued within the Plan;  
16

17 (iii) keep the Commissioner continually advised of the address  
18 and telephone number of the insurer's office servicing the Plan  
19 on its behalf;  
20

21 (iv) maintain a toll-free telephone number or numbers adequate  
22 to service the Plan and keep the Commissioner, employers, the  
23 Workers Compensation Commission, and producers continually  
24 apprised of same;  
25

26 (v) establish a program and procedure whereby such carriers  
27 shall not make ultimate determination as to joint settlement of  
28 claims without consulting with the employer insured; nothing  
29 herein shall be deemed to alter or abridge the servicing  
30 carrier's ultimate right and authority under the law and contract  
31 to handle and determine the defense of workers' compensation  
32 claims;  
33

34 (vi) maintain its billing and rating procedure in timely  
35 compliance with applicable Orders of the Commissioner approved  
36 rate filings and approved rule and rating plans; and  
37

38 (vii) such other service or performance standards including, but  
39 not limited to, matters relating to loss experience, safety and  
40 loss control success, profitability, underwriting, billing and  
41 collection of premium, audits, claims, customer service, and such  
42 accounting and statistical results reporting as may be  
43 specifically required by the Commissioner.  
44

45 The written "Performance Standards and Procedures for Measuring  
46 Servicing Carrier Performance" hereunder are those currently in effect and  
47 and are those established by the Council. All of which said provisions  
48 are expressly incorporated herein and made a part hereof; such Performance  
49 Standards and Procedures for Measuring Servicing Carrier Performance may  
50 be amended and supplemented from time to time with the prior, express  
51 written approval of the Commissioner; provided, however, that no servicing  
52 carrier shall be subjected to the administrative fine or penalty provided  
53 for in subparagraph (7) hereof as to any particular performance standard  
54 of which it has not had at least three (3) month's notice. All servicing  
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1 carriers shall be deemed to have Notice upon the Plan Administrator's  
2 receipt of approval from the Commissioner.

3

4 (5) Servicing carriers may, within the reasonable discretion of the  
5 Commissioner, join cooperatively with other licensed casualty  
6 insurers or general business corporations for the purpose of  
7 satisfying other duties as servicing carriers, including but not  
8 limited to policy issuance, claim review and payment, accounting and  
9 auditing and loss control and safety functions. Any insurer  
10 applying for approval as a servicing carrier, or any currently  
11 approved servicing carrier which has contracted or agreed to  
12 contract with a third party, shall make full disclosure of such  
13 party and provide the Plan Administrator and Commissioner with all  
14 such information regarding same as they may request. All such third  
15 party contractual arrangements and amendments thereof shall be  
16 subject to review, examination and approval or disapproval of the  
17 Commissioner upon request. No such contract of a servicing carrier  
18 with another entity will in any manner lessen the duties and  
19 obligations of the servicing carriers or the standards by which  
20 their performance is to be measured.

21

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

47

48 (7) In addition to the adjustments to remuneration of servicing  
49 carriers as discussed above and the progressive discipline  
50 procedure, servicing carriers are subject to the imposition by the  
51 Commissioner, after notice and hearing, of administrative fine or  
52 penalty in the sum of not more than One Thousand Dollars (\$1,000.00)  
53 for each violation of standard. Violations of standards of  
54 performance shall be reviewed annually by the Plan Administrator and

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1 the Commissioner and determined cumulatively under each separate  
2 performance standard.

3  
4 SECTION 10. INTERSTATE ASSIGNMENTS

5  
6 A. Voluntary Coverage. Any employer assigned under this Plan and  
7 desiring workers' compensation insurance for operations in states other  
8 than Arkansas may request its servicing carrier to furnish such insurance  
9 in such additional states. Workers' compensation insurance in such  
10 additional states may be written by the servicing carrier on a voluntary  
11 basis and in accordance with the law, rates, rules, classifications, and  
12 regulations applicable to the voluntary workers' compensation market in  
13 those states.

14  
15 B. Assigned Risk Coverage. (1) "Similar" Assigned Risk States. If the  
16 servicing carrier does not wish to provide coverage in the additional  
17 states on a voluntary basis, if those states have a Workers' Compensation  
18 Insurance Plan that is similar to this Plan and if such other Plan allows  
19 employers applying for coverage thereunder to obtain coverage for their  
20 operations in Arkansas, then the servicing carrier must provide assigned  
21 risk coverage in such additional states as follows:

- 22  
23 (1) A servicing carrier providing such insurance shall collect all  
24 premiums due on operations located in such other states. The  
25 effective date of such insurance in such additional states  
26 shall be the day after premium is received; however, in the  
27 event coverage in such additional states is on an "if any"  
28 basis, the effective date of such coverage shall be the day  
29 following receipt of an acceptable request for such insurance  
30 by the carrier. A copy of the policy Information Page and all  
31 endorsements, properly stamped "AR WCIP," shall be submitted to  
32 the appropriate Plan Administrator having jurisdiction in the  
33 state where the coverage is effected.  
34  
35 (2) The rates, rating plans, classifications, and policy forms used  
36 to provide coverage in such additional states shall be those  
37 applicable to residual market risks that are on file and  
38 approved by the regulators in those additional states.  
39  
40 (3) The servicing carrier must also be a signatory to an agreement  
41 providing reinsurance for residual market risks similar to the  
42 Articles of Agreement in each state where the coverage will be  
43 provided.

44  
45 A servicing carrier unable to provide insurance for an employer in  
46 additional states in accordance with this Section 13.B. or unwilling to  
47 write voluntary coverage in accordance with Section 13.A., shall refer the  
48 request to the Plan Administrator which shall re-assign the employer to a  
49 servicing carrier or carriers that is/are able to provide coverage in  
50 accordance with this Section 13.A. and Section 13.B..

51  
52 (2) All Other States. If the servicing carrier does not wish to  
53 provide coverage in an additional state on a voluntary basis, and if the  
54 state in question does not have a Workers' Compensation Insurance Plan

1 that is similar to this Plan, then the servicing carrier must provide  
2 coverage for operations of an Arkansas employer in such additional state  
3 IF AND ONLY IF:

- 4
- 5 a. the employer has made application to no fewer than two (2)  
6 voluntary workers' compensation insurers authorized to insure  
7 such risks in such state and has been declined, if such state in  
8 fact, has a voluntary workers' compensation insurance market; and  
9
- 10 b. the employer has made application to either an "unsimilar"  
11 assigned risk plan, or to either a competitive or mandatory state  
12 workers' compensation fund in such state and has been declined  
13 for coverage.  
14

15 In the event coverage in another state cannot be obtained in the  
16 fashion as set forth above, then the services as rendered by employees of  
17 the Arkansas employer shall be deemed to be services rendered pursuant to  
18 a contract of "employment in this State" as provided by Ark. Code Ann.  
19 §11-9-102(12) and as amended by Section 2 of Act 796 of 1993, and the  
20 servicing carrier shall provide coverage for such operations under this  
21 Plan and under the mandate of Ark. Code Ann. §11-9-404(a)(1); PROVIDED,  
22 HOWEVER, that in the event any employee of any such employer incurs an  
23 injury or occupational disease compensable under the law of such other  
24 State, elects to recover under such laws and is finally successful in so  
25 doing, the servicing carrier shall be entitled to recoup from such  
26 employer the additional premium, if any, that would have been billed to  
27 that employer for the services of that employee in that other State by:  
28 (i) either the risk plan or competitive or monopolistic fund operating in  
29 such State; or (ii) a licensed workers compensation insurer legally  
30 providing coverage to an employer in such State pursuant to the laws  
31 thereof. Such carrier recouping premium in this manner shall be entitled  
32 to recoup premium for a period of coverage equal to the period of time the  
33 injured employee performed services in such State (subject to the maximum  
34 differential, if any, between the Arkansas rates and the other State rates  
35 for a period of one policy year) and shall be entitled to bill and collect  
36 from the employer the said premiums as premium due hereunder and subject  
37 to the cancellation procedures set forth in Section 9 hereof.  
38

39 C. Foreign Employers. (1) From Similar Assigned Risk State.  
40 Employers who make application for workers' compensation insurance under  
41 another state's Workers' Compensation Insurance Plan may purchase coverage  
42 for operations in Arkansas without meeting the application requirements of  
43 this Plan, provided: (1) the employer qualifies for such insurance under  
44 the other state's Plan; (2) the employer is in good faith entitled to  
45 insurance under this Plan; (3) the other state's Plan is similar to this  
46 Plan; (4) that Plan also provides for interstate assignments; and (5) the  
47 payroll for the employer's operation in this State is not greater than the  
48 payroll in the other state.  
49

50 The rates, rating plans, classifications, and policy forms used to  
51 provide coverage in Arkansas shall be those that are applicable to  
52 residual market risks in this State and are on file and have been approved  
53 by the Commissioner.  
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1 The Administrator of the other Plan is authorized to assign  
2 employers with operations in Arkansas to the other Plan's servicing  
3 carriers subject to the following conditions:  
4  
5

6 (a) The assigned carrier must be a signatory to the Articles of  
7 Agreement in this State. In addition, if the payroll for the  
8 employer's operation in this State is greater than \$250,000, the  
9 assigned carrier must also be a servicing carrier in this State.  
10

11 (b) The other state's Plan must give the Plan Administrator in this  
12 State similar authority to make interstate assignments.  
13

14 (2) From All Other States. Employers who are either: (i) insured  
15 under an assigned risk plan not "similar" to that of this State; (ii)  
16 insured voluntarily by a workers compensation insurer from such other  
17 State; or (iii) insured under or by a competitive or monopolistic state  
18 fund in such other state, shall be eligible for coverage under this Plan  
19 as to its known and anticipated operations in this State if it is  
20 otherwise eligible for coverage under the terms of Section 5 hereof.  
21

22 D. Jurisdiction. With regard to interstate assignments and policies,  
23 this Plan shall have jurisdiction over all disputes resulting from the  
24 application of rules, programs, and procedures that are specific to this  
25 State. Disputes regarding application requirements shall be under the  
26 jurisdiction of the state's Plan where the application was filed.  
27

## 28 SECTION 11. ASSOCIATION OR SPONSORED MULTIPLE COORDINATED POLICIES 29

30 Pursuant to the provisions of Ark. Code Ann. §11-9-408(d) [as added  
31 by §12 of Act 796 of 1993] and Ark. Code Ann. §23-67-211 [as added by §1  
32 of Act 1269 of 1993] the Plan Administrator shall develop and administer  
33 a plan for the issuance of multiple coordinated policies of workers'  
34 compensation and employers' liability insurance subject to the approval of  
35 the Commissioner. Such multiple coordinated or group policies may only be  
36 issued to cover groups containing no fewer than five (5) separate  
37 employers who shall not be affiliated with one another in terms of  
38 ownership, control, or right to participate in the profits of an  
39 affiliated enterprise. The "sponsor" or administrator of such policies  
40 must either be a general contractor meeting the financial capacity and  
41 continuity guidelines as shall be set forth in the rating plan and  
42 approved by the Commissioner or a recognized industry association which is  
43 incorporated or organized as a not-for-profit corporation or association  
44 and which has been in existence for no fewer than three (3) years prior to  
45 application for approval as a "sponsor". Further,  
46

47  
48 (i) each employer within the association or group must  
49 be engaged in the same general business activity  
50 as determined by the Plan Administrator and within  
51 the principles and guidelines of the Scopes of  
52 Basic Manual Classifications as published from  
53 time to time by the National Council on  
54 Compensation Insurance, or some such similar  
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1 classification system as may be chosen by the  
2 Commissioner, such as the Standard Industrial  
3 Classifications Manual;

4  
5 (ii) the sponsor assumes joint responsibility with each  
6 of the employers for the payment of all required  
7 premium, including deposit, and agrees in writing  
8 to subject itself to audit and review of all of  
9 his records and practices relating to the business  
10 to which the association or multiple coordinated  
11 policies shall pertain; and

12  
13 (iii) the sponsor provides the Plan Administrator with  
14 such additional security in the way of cash  
15 deposit, or marketable securities, or a letter of  
16 credit from a National Banking Association  
17 unaffiliated with the sponsor as the Plan  
18 Administrator reasonably deems necessary; the Plan  
19 Administrator may adjust the amount of the  
20 required additional deposit from time to time  
21 depending upon the claim experience of the  
22 association groups and the audited and collected  
23 premium.

24  
25 Multiple coordinated policies shall be issued in the name of each  
26 employer but delivered to the sponsor, and all premiums shall be  
27 calculated upon the wages paid to or received by the employers in  
28 accordance with Plan Rules. All claims experience shall be identified to  
29 each employer and records maintained relative thereto by the Plan  
30 Administrator, including experience modifiers as appropriate.

31  
32 SECTION 12. ASSIGNMENT FORMULA

33  
34 The Plan Administrator shall develop and provide to the Commissioner  
35 detailed procedures for the equitable distribution of employers under this  
36 Plan to servicing carriers. These procedures shall provide for the  
37 random distribution of employers based on the amount of estimated premium  
38 in the Plan, so far as practicable. The procedures shall also define  
39 those circumstances where the Plan Administrator will have the discretion  
40 to override the random selection process and shall account for the  
41 variations necessitated by the "striking procedure" set forth at Section 6  
42 hereinabove.

43  
44 SECTION 13. DISPUTE RESOLUTION PROCEDURE

45  
46 Any person affected by the operation of the Plan including, but not  
47 limited to, participating companies, employers, producers, and servicing  
48 carriers, who may have a dispute with respect to any aspect of the Plan,  
49 including rating and classification, eligibility, and auditing disputes  
50 and any dispute arising under the Articles of Agreement, may seek a review  
51 of the matter by the Plan Administrator by setting forth in writing with  
52 particularity the nature of the dispute, the parties to the dispute, the  
53 relief sought and the basis thereof. The Plan Administrator, as designee  
54 of the Commissioner, may secure such additional information as it deems  
55

1 necessary to make a decision and shall in the instance of disputes  
2 involving, comply with all requirements of due process and Ark. Code Ann.  
3 §23-67-119(3) and the Arkansas Appeals Board Objectives and Rules as  
4 approved by the Commissioner.

5

6 Appeals from employers and insurers on Plan matters regarding employer  
7 disputes shall be within the jurisdiction of the mechanism established to  
8 handle such appeals under the applicable rating law i.e. Ark. Code §  
9 23-67-119(3). All other disputes shall be handled as follows:

10

11 (1) If the dispute relates to the general operation of the Plan,  
12 excluding individual employer disputes as noted above and those  
13 arising under the Articles of Agreement, the Plan Administrator will  
14 review the matter and render a written decision with an explanation of  
15 the reasons for the decision within thirty (30) days after receipt of  
16 all the information necessary to make the decision. Any party  
17 affected by a decision made by the Plan Administrator may seek a  
18 review by a committee appointed by the President of the National  
19 Council on Compensation Insurance for such purpose. Such committee  
20 shall consist of three (3) senior officers of the Council. A request  
21 for a review by such committee must be made to the Plan Administrator  
22 in writing within thirty (30) days of the date of the Plan  
23 Administrator's decision. Any party affected by the decision of such  
24 committee may seek a de novo review by the Commissioner by requesting  
25 such review, in writing, within thirty (30) days after the date of  
26 such decision.

27

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

35

36 (2) Except as provided below, if the dispute arises under the  
37 Articles of Agreement, the Administrator designated under the Articles  
38 of Agreement shall first review the matter and render a written  
39 decision with an explanation of the reasons for the decision within  
40 thirty (30) days after receipt of all the information necessary to  
41 make the decision. Any party affected by the decision may seek a  
42 review by the Board of Governors established under the Articles by  
43 requesting such review, in writing, within thirty (30) days of the  
44 date of the decision by the Administrator under the Articles of  
45 Agreement. The Board of Governors must then review the matter and  
46 render its written decision pursuant to the procedures set forth in  
47 the Articles of Agreement. Any party affected by a decision of the  
48 Board of Governors may seek a de novo review by the Commissioner by  
49 requesting such a review in writing within thirty (30) days of the  
50 date of the Board of Governors' decision.

51

52 If the dispute relates to the expulsion of a participating company  
53 under the Articles of Agreement by the Board of Governors, any appeal may  
54 be taken directly to the Commissioner without first complying with the

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1 procedures contained herein.

2

3 SECTION 14. SELF-FUNDED PLAN

4

5 It is ultimately essential for maintaining the viability of the Plan  
6 to establish and maintain rates at a level that will permit the Plan to  
7 operate as a self-funded mechanism. The Plan Administrator shall maintain  
8 necessary ratemaking data in order to permit the actuarial determination  
9 of rates and rating plans appropriate for the business insured through the  
10 Plan. All assigned carriers are required to report their experience on  
11 business written under the Plan to the Administrator in a format  
12 prescribed by the Council. It is the responsibility of the Plan  
13 Administrator to monitor both rate adequacy and Plan results. The Plan  
14 Administrator shall notify the Commissioner if excessive losses are  
15 indicated to enable the Commissioner to take corrective action.

16

17 SECTION 15. SMALL DEDUCTIBLE POLICY OPTION

18

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

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39 SECTION 16. OTHER STANDARDS AND PENALTIES

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

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

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52 C. No servicing carrier insuring an employer through the Plan may utilize  
53 any information gained through its administrative services for the purpose  
54 of securing other insurance business from such employer. No such carrier

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1 shall share or reveal any such proprietary information with or to any of  
2 its agents or brokers, with or to any other carrier, or, if it is a direct  
3 writer, with or to any of its in-house marketing personnel. Violation of  
4 this prohibition shall be considered an Unfair Method of Competition in  
5 violation of the Trade Practices Act.

6

7 D. No licensed agent, broker or solicitor or any insurer (whether or not  
8 a servicing carrier) may knowingly submit an offer of workers'  
9 compensation insurance coverage to an employer on a monoline basis on a  
10 rating plan that has not been previously approved by the Commissioner, nor  
11 shall any such person or entity make any offer of workers' compensation  
12 insurance in combination or coordination with other property and/or  
13 casualty coverages or limits which are not desired by the employer, nor  
14 shall such person or entity apply its filed and approved rates or rating  
15 plans (including all applicable discounts or credits) to such employer in  
16 an unfairly discriminatory manner. Any person or entity determined to  
17 have knowingly violated this prohibition shall be deemed guilty of an  
18 unfair or deceptive act or practice in the business of insurance as  
19 provided at Ark. Code Ann. §§23-66-205 et. seq.

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21 SECTION 17. SEVERABILITY

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

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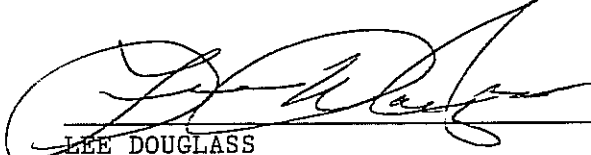
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LEE DOUGLASS

INSURANCE COMMISSIONER

STATE OF ARKANSAS

12-20-96

DATE

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