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**RULE AND REGULATION 54**

**ARKANSAS WORKERS'  
COMPENSATION INSURANCE PLAN**

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**SECTION 1. AUTHORITY**

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

**SECTION 2. EFFECTIVE DATE**

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

### **SECTION 3. PURPOSE**

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

### **SECTION 4. WCIP DEFINITIONS**

- A. "Affiliated Insurer" An insurer that directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with another insurer specified. The term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an insurer, whether through the ownership of voting securities, by contract, or otherwise. Control shall be deemed to exist if any person or business enterprise, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies, representing ten (10) percent or more of the voting securities of any other insurer.
- B. "Articles of Agreement" or "Articles" The reinsurance mechanism authorized under this Plan to provide reinsurance to the servicing carriers on employers assigned to them under this Plan, which said agreement and any amendments thereto shall be provided to and approved by the Commissioner but which, in cases of conflict between them and this Rule and Regulation, shall be subordinate to this Rule and Regulation.
- C. "Assigned Carrier" or "Servicing Carrier" The insurer authorized to receive Plan assignments and provide coverage to eligible employers on behalf of those participating companies subscribing to the Articles of Agreement incorporated as a part of the Plan in this state.
- D. "Collected Premium" The gross direct premium charged and physically collected and receipted for all employers subject to this Plan.
- E. "Commissioner" The Insurance Commissioner for the State of Arkansas.
- F. "Employer" Any business organization or enterprise that is required by statute to maintain workers compensation insurance in this State. The term shall include any business organizations or enterprises that are affiliated as a result of common management or common ownership.
- G. "National Council on Compensation Insurance, Inc." or "NCCI" The rating organization or advisory organization licensed in this State to make and file rates, rating values, classifications, and rating plans for workers' compensation insurance.
- H. "Net Premiums Written" The gross direct premiums charged less all premiums (except dividends and savings refunded under participating policies) returned to insureds for all Workers Compensation and Occupational Disease Insurance, exclusive of premiums for employers subject to this Plan, and for employers written under the National Defense Projects Rating Plan and under excess policies.
- I. "Plan" or "WCIP" The Arkansas Workers' Compensation Insurance Plan.
- J. "Plan Administrator" Such organization or organizations to which the responsibility for administering the affairs of the Plan may, from time to time, be delegated, including but not limited to such functions and duties as rates, forms, and statistics.
- K. "Premium in Dispute" A workers' compensation insurance premium obligation in which a bona fide dispute exists only if the employer or its representative has provided:
- (a) written notice to the insurer or the servicing carrier detailing the specific areas of dispute;
  - (b) an estimate of the premium the employer believes to be correct, with an explanation of the premium calculation;

- (c) payment of the undisputed portion of the premium; and
- (d) a written request that includes all information relevant to the dispute to the Plan Administrator for a hearing before the appropriate administrative or regulatory body having jurisdiction over appeals on Plan matters.

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

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

N. "Voluntary Offer of Coverage" A legitimate, good faith offer of workers' compensation insurance made by a workers' compensation insurer to an employer on a "voluntary" basis outside this Plan, which said offer is either: (i) of such workers' compensation insurance on a monoline basis and on a reasonable rating plan approved for use in Arkansas by the Commissioner for that insurer; or (ii) of such workers' compensation insurance in combination or coordination with other property and/or casualty coverages and limits desired by the employer and as such insurer may also offer; provided however, that such insurer shall apply its filed rating plan (including all applicable discounts or credits) to such employer in a good faith, non-discriminatory manner. "Voluntary Offer of Coverage" shall in no event be interpreted as including or referring to an offer, entreaty or opportunity presented for coverage under any type of self-insured workers' compensation plan. Neither the Plan Administrator(s) nor the servicing carrier(s) shall have a responsibility to determine whether the putative voluntary offer of coverage is truly "voluntary", but any agent or broker and any insurer knowingly submitting an offer of workers compensation coverage to an employer which does not meet the above definition of a bona fide "voluntary offer" may be in violation of Ark. Code Ann. §§23-66-205 et. seq. and Section 16.D. of this Rule and Regulation.

0. "Workers' Compensation Insurance"

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

- (b) Employers liability insurance written in connection with a workers' compensation policy; and
- (c) Such other coverages as approved by the Commissioner.

## **SECTION 5. RULES FOR ELIGIBILITY AND ASSIGNMENT**

A. Good Faith.

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

- (1) Good faith rules of eligibility.

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

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

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

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

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

## B. Declinations

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

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

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

## C. Forms and Rates

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

## D. Securing a Requested Effective Date

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

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

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

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

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

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

#### E. Application Review

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

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

#### F. Additional States Coverage

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

#### G. Premium Obligations

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

#### H. Initial or Deposit Premium

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

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

#### I. Binding of Coverage

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

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

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

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

#### J. Binder Information

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

#### K. Reassignment

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

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

#### L. Producer Information

##### (1) Producer Fee

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

##### (2) Producer Changes

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

#### M. Additional Coverages

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

#### N. Policy Term

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

## **SECTION 6. CANCELLATION AND RENEWAL**

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

- 1) Where the employer is not eligible for the Plan as provided in Section 5 of this Rule and Regulation;
- 2) Where the employer refuses to implement reasonable health, safety or loss control recommendations of the servicing carrier or of a duly-authorized government agency;
- 3) Where the employer refuses to allow the servicing carrier reasonable access to its facilities or to its files and records for audit or inspection; or
- 4) Where the employer refuses to disclose to the servicing carrier the full nature and scope of the servicing carrier's exposure.

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

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

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

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

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

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

## **SECTION 7. PARTICIPATION**

All insurers licensed to write and actually writing workers compensation insurance in this State are required to participate in this Plan and subscribe to the Articles of Agreement for this State. Any assessment that may be required of such carriers by reason of Ark. Code Ann. J23-67-204(a)(6) may be offset to the extent provided under the terms of the "Take Out Credit Program" Rating Plan of the National Council on Compensation Insurance as approved by the Commissioner.

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

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

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

## **SECTION 8. PLAN ADMINISTRATOR**

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

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

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

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

- (1) administering, managing, and enforcing the Plan subject to the provisions contained herein;
- (2) determining the methodology and formula for making assignments to servicing carriers pursuant to Section 15 and securing the necessary information in order to make the assignments;
- (3) processing assigned risk applications pursuant to the requirements of this Plan;
- (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;
- (7) administering the dispute resolution mechanism as provided in Section 16;
- (8) developing and implementing assigned risk operating rules and forms to the extent necessary to carry out the purposes of this Plan;
- (9) informing the Commissioner of any insurer that is improperly not participating in this Plan; and
- (10) monitoring the performance and operation of the Plan and initiating and requesting approval of amendments thereto as appropriate.

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

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

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

## **SECTION 9. SERVICING CARRIERS**

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

- (1) **Eligibility to Act As a Servicing Carrier.** The Plan Administrator shall establish written requirements that insurers must meet in order to be eligible to act as a servicing carrier. Those requirements shall consider, among other things, the insurer's financial standing, availability of resources, length and quality of experience in the state writing workers compensation insurance, market share, and demonstrated compliance with the mandates of Ark. Code Ann. §§23-67-201 et. seq. From among those insurers that are eligible and have applied to act as a servicing carrier, the Plan Administrator shall appoint a sufficient number of servicing carriers as are needed to handle the assignments made pursuant to this Plan. The Plan Administrator may terminate the servicing carrier status, subject to the approval of the Commissioner, of any insurer that fails to meet the servicing carrier requirements on a continuing basis. During the first year this Plan is in effect, any insurer that is qualified as a servicing carrier under any similar Plan which was previously in effect in this State and continues to be qualified as of the date this Plan takes effect will be deemed to be a qualified servicing carrier under this Plan.
- (2) **Quarterly Operations Report.** Each servicing carrier shall provide a quarterly report to the Plan Administrator in such format and at such time as determined by the Plan Administrator. This report, among other things, shall provide information on the servicing carrier's operations related to Plan business in the following areas: underwriting, auditing, claims, loss control, premium collection, and customer service.
- (3) **Standards for Servicing Carrier Performance, Compensation, and Incentives.** The Plan Administrator shall, with the approval of the Commissioner, establish written minimum levels of acceptable performance for servicing carriers and shall establish procedures for measuring servicing carrier performance. Servicing carriers shall manage losses in compliance with the performance standards established hereunder. The Plan Administrator shall also establish the compensation for servicing carriers which shall take into consideration, among other things, provisions for (a) rewarding servicing carriers for positive action targeted at reducing losses and costs, and (b) disincentives for inefficiencies and poor service, and (c) servicing carrier capacity. And, in accordance with Ark. Code § 23-67-204 (k) the performance plan shall provide that up to Thirty-three percent (33%) of the servicing carrier's remuneration shall be based upon how well or how poorly it complies with the standards for servicing carrier performance, including particularly, but not limited to, a review of collected premium as versus written premium and by review of loss ratios of its book of business and degree of improvement therein. Such compensation system shall be made effective with respect to and shall apply to all servicing carrier contracts effective on or after September 1, 1993. The Plan Administrator, as approved by the Commissioner, shall on an equitable and consistent basis provide that those monies that would otherwise have gone to servicing carriers that did not

perform up to an acceptable standard shall be distributed amongst those servicing carriers that met or exceeded the performance standards.

- (4) Each servicing carrier shall continually employ such number of qualified administrative personnel and dedicate such equipment and facilities to the administration of the Arkansas Workers' Compensation Insurance Plan as the Commissioner, in his reasonable discretion, deems adequate to service the needs of the Plan; and, further, the standards for servicing carrier performance shall include a requirement that each of them shall:
- (i) provide a level of service equal to that provided to employer-insureds in its voluntary workers compensation line of business and assure same by putting into effect internal administrative procedures which shall assure that such is the case;
  - (ii) maintain with the Commissioner a list of responsible management personnel of the insurer qualified to make administrative decisions on the insurer's behalf concerning policies issued within the Plan;
  - (iii) keep the Commissioner continually advised of the address and telephone number of the insurer's office servicing the Plan on its behalf;
  - (iv) maintain a toll-free telephone number or numbers adequate to service the Plan and keep the Commissioner, employers, the Workers Compensation Commission, and producers continually apprised of same;
  - (v) establish a program and procedure whereby such carriers shall not make ultimate determination as to joint settlement of claims without consulting with the employer insured; nothing herein shall be deemed to alter or abridge the servicing carrier's ultimate right and authority under the law and contract to handle and determine the defense of workers' compensation claims;
  - (vi) maintain its billing and rating procedure in timely compliance with applicable Orders of the Commissioner approved rate filings and approved rule and rating plans; and
  - (vii) such other service or performance standards including, but not limited to, matters relating to loss experience, safety and loss control success, profitability, underwriting, billing and collection of premium, audits, claims, customer service, and such accounting and statistical results reporting as may be specifically required by the Commissioner.

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

- (5) Servicing carriers may, within the reasonable discretion of the Commissioner, join cooperatively with other licensed casualty insurers or general business corporations for the purpose of satisfying other duties as servicing carriers, including but not limited to policy issuance, claim review and payment, accounting and auditing and loss control and safety functions. Any insurer applying for approval as a servicing carrier, or any currently approved servicing carrier which has contracted or agreed to contract with a third party, shall make full disclosure of such party and provide the Plan Administrator and Commissioner with all such information regarding same as they may request. All such third party contractual arrangements and amendments thereof shall be subject to review, examination and approval or disapproval of the Commissioner upon request. No such contract of a servicing carrier with another entity

will in any manner lessen the duties and obligations of the servicing carriers or the standards by which their performance is to be measured.

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

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

## **SECTION 10. INTERSTATE ASSIGNMENTS**

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

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

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

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

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

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

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

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

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

C. Foreign Employers. (1) From Similar Assigned Risk State.

Employers who make application for workers' compensation insurance under another state's Workers' Compensation Insurance Plan may purchase coverage for operations in Arkansas without meeting the application requirements of this Plan, provided: (1) the employer qualifies for such insurance under the other state's Plan; (2) the employer is in good faith entitled to insurance under this Plan; (3) the other state's Plan is similar to this Plan; (4) that Plan also provides for interstate assignments; and (5) the payroll for the employer's operation in this State is not greater than the payroll in the other state.

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

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

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

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

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

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

## **SECTION 11. ASSOCIATION OR SPONSORED MULTIPLE COORDINATED POLICIES**

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

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

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

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

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

## **SECTION 12. ASSIGNMENT FORMULA**

The Plan Administrator shall develop and provide to the Commissioner detailed procedures for the equitable distribution of employers under this Plan to servicing carriers. These procedures shall provide for the random distribution of employers based on the amount of estimated premium in the Plan, so far as practicable. The

procedures shall also define those circumstances where the Plan Administrator will have the discretion to override the random selection process and shall account for the variations necessitated by the "striking procedure" set forth at Section 6 hereinabove.

### **SECTION 13. DISPUTE RESOLUTION PROCEDURE**

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

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

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

In reviewing any such matter not coming within the scope of Ark. Code Ann. 623-67-119(3)(B), the Commissioner shall follow those procedures applicable to administrative hearings in this State. The Commissioner shall decide the dispute in accordance with the state law, regulation, and policy and in the interests of the reasonable and proper administration of this Plan. The Commissioner's decision shall be final, subject to court review under Ark. Code Ann. § 23-61-307.

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

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

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

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

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

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

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

- A. Any insurer, servicing carrier, or producer who refuses or neglects to comply with the provisions of this Rule and Regulation shall be subject to administrative action provided for in the Arkansas Insurance Code, Arkansas Code Annotated §§ 23-60-101, et seq.
- B. Any servicing carrier who fails to comply with the requirements of Section 12 of this Rule and Regulation, as reported to the Commissioner by the Plan Administrator, may have their designations to act in such capacity hereunder suspended or revoked upon notice and hearing pursuant to Arkansas Code Annotated §§ 23-61-301, et seq.
- C. No servicing carrier insuring an employer through the Plan may utilize any information gained through its administrative services for the purpose of securing other insurance business from such employer. No such carrier shall share or reveal any such proprietary information with or to any of its agents or brokers, with or to any other carrier, or, if it is a direct writer, with or to any of its in-house marketing personnel. Violation of this prohibition shall be considered an Unfair Method of Competition in violation of the Trade Practices Act.
- D. No licensed agent, broker or solicitor or any insurer (whether or not a servicing carrier) may knowingly submit an offer of workers' compensation insurance coverage to an employer on a monoline basis on a rating plan that has not been previously approved by the Commissioner, nor shall any such person or entity make any offer of workers' compensation insurance in combination or coordination with other property and/or casualty coverages or limits which are not desired by the employer, nor shall such person or entity apply its filed and approved rates or rating plans (including all applicable discounts or credits) to such employer in an unfairly discriminatory manner. Any person or entity determined to have knowingly violated this prohibition shall be deemed guilty of an unfair or deceptive act or practice in the business of insurance as provided at Ark. Code Ann. §§23-66-205 et. seq.



## **SECTION 17. SEVERABILITY**

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

(signed by Commissioner Douglass)

LEE DOUGLASS  
INSURANCE COMMISSIONER  
STATE OF ARKANSAS

December 20, 1996

DATE