

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

FILED
JAN 7 3 25 PM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

Workers' Compensation Division
AGENCY: Bureau of Employment Programs TITLE NUMBER: 85
CITE AUTHORITY: W.Va. Code, 21A-2-6(2); 21A-3-7(b); 21A-3-7(c); 23-1-1; 23-2-4;
23-2-9; & 23-2-18
RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE X
CITE STATUTE(s) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

21A-2-6(1); 21A-2-6(2); 21A-2-6(14); 21A-2-19; 21A-3-7(b); 21A-3-7(c) &
23-1-1

AMENDMENT TO AN EXISTING RULE: YES _____, NO **

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: ** The adopted rule repeals and replaces
85CSR9, "Self Insured Employers," and Sections two, three, four, five,
six, seven and eight of 85CSR1, "Administration of the Workers'
Compensation Fund"

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: 9

TITLE OF RULE BEING ADOPTED: Risk Management

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS February 6, 1997

Andrew N. Richardson
Andrew N. Richardson
Commissioner
Bureau of Employment Programs

TITLE 85
EXEMPT LEGISLATIVE RULES
BUREAU OF EMPLOYMENT PROGRAMS
WORKERS' COMPENSATION DIVISION

SERIES 9
RISK MANAGEMENT

§85-9-1. General.

1.1. Scope. -- This exempt legislative rule provides for the implementation of a system designed to underwrite the risk of providing for workers' compensation insurance, as administered by the workers' compensation division of the bureau of employment programs, in accordance with the provisions of West Virginia Code, §23-1-1, et seq.

1.2. Authority. -- West Virginia Code, §21A-2-6(2); §21A-3-7(b) & -7(c); §23-1-1; §23-2-4; 23-2-9; and §23-2-18. Pursuant to West Virginia Code, §21A-3-7(c), rules adopted by the compensation programs performance council and the commissioner are not subject to legislative approval as would otherwise be required under West Virginia Code, §29A-3-1 et seq. Public notice requirements of that chapter and article, however, must be followed. Pursuant to enrolled committee substitute for house bill 4030, regular session, 1994, the department of commerce, labor and environmental resources was abolished. Pursuant to that same bill and to executive order no. 5-94 by the governor, the commissioner of the bureau of employment programs is empowered to promulgate rules and regulations without the consent or approval of a departmental secretary.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Repeal and replacement. -- This rule repeals and replaces 85 C.S.R. 9, entitled "Self-Insured Employers", which was filed on July 2, 1993, and became effective on July 2, 1993. This rule repeals and replaces sections two, three, four, five, six, seven, and eight of 85 C.S.R. 1, entitled "Administration of the Workers' Compensation Fund", which was filed on April 15, 1986, and became effective on July 1, 1986.

§85-9-2. Purpose of rule.

The purpose of this rule is to provide for the administration of a fair and equitable system for determining the risk associated with providing workers' compensation insurance coverage and pricing such coverage consistent with the general provisions and purposes of W. Va. Code, §23-1-1, et seq., and consistent with the specific provisions and purposes of W. Va. Code, §23-2-4 and §23-2-9.

§85-9-3. Definitions.

As used in this rule, the following terms, words, and phrases have the meanings stated unless in any instance where such term, word, or phrase is employed and the context expressly indicates that another meaning is intended.

3.1. "Act" means the workers' compensation laws of the state of West Virginia which are codified at chapter twenty-three of the Code of West Virginia.

3.2. "Assets" means probable future economic benefits obtained or controlled by an employer as a result of past transactions or events. These shall include, but not be limited to, good will, business assets, customers, clients, contracts, access to leases such as the right to sublease, assignment of contracts for the sale of products, operations,

stock of goods or inventory, accounts receivable, equipment, or transfer of substantially all of its employees or such other assets which have the following three (3) characteristics

(1) It embodies probable future benefit that involves a capacity, singly or in combination with other assets, to contribute directly or indirectly to future net cash inflows;

(2) A particular employer can obtain the benefit and control others' access to it; and

(3) The transaction or other event giving rise to the employer's right to or control of the benefit has already occurred.

3.3. "Classification" shall mean a categorization of employers for the purpose of assessing risk. Classifications are assigned in accordance with the guidelines approved by the compensation programs performance council.

3.4. "Code of West Virginia" and "West Virginia Code" mean the West Virginia Code of 1931, as amended.

3.5. "Commissioner" means the commissioner of the bureau of employment programs pursuant to West Virginia Code, §21A-2-1, and West Virginia Code, §21A-2-12 & -13.

3.6. "Compensation fund" means the fund created by West Virginia Code, §23-3-1, which includes the surplus fund.

3.7. "Compensation programs performance council" means that body created within the bureau of employment programs under the provisions of W. Va. Code, §21A-3-1.

3.8. "Coverage period" means the period of time during which an employer is provided workers' compensation coverage by the division.

3.9. "Decision" means a written statement issued by the division containing the division's findings of facts and conclusions as to any issue presented to the division under this rule. Such decisions shall include, but not be limited to, notices of delinquency and notices of default. Any purported "decision" which is not in writing shall have no legal effect under this rule.

3.10. "Default" means either or both of the following:

a. The failure by an employer which has not made a payment or filed a report due by it under the provisions of the Act and which has received a notice of delinquency but has further failed to make the payment or file the report within the time period specified by the notice. For the purposes of this definition, the employer may be a regular subscriber to the Fund or a self-insured employer with the Fund and either an employer required to subscribe to the Fund or an employer electing to subscribe to the Fund.

b. The omission or failure by an employer to subscribe to and pay premiums into the Fund and to comply with the requirements of the West Virginia Workers' Compensation Act at chapter 23 of the W. Va. Code, and the rules prescribed by the division, as provided by the Code at §23-2-1(a), prior to the first date of employment of any employee of the employer and thereafter, shall cause default to occur immediately prior to the moment of employment of any employee upon the employer's omission or failure to subscribe or comply by that time. Default, as defined in this subsection, shall begin immediately, without notice as required by W. Va. Code, §23-2-5, for delinquencies of subscribing employers, subject the employer to all the penalties prescribed by law, including interest

on unpaid amounts, late reporting or payment penalty, penalty premium rate and other penalties and collection actions prescribed by Code and rules, including particularly the penalty prescribed by W. Va. Code at §23-2-8, that is, the default employer shall **may** be liable to respond in damages at common law or by statute for the injury or death of any employee, however occurring, without the benefit of the common law defenses set forth in that section. This default may be cured through the employer's compliance with the Act and rules. If the default employer has not filed an application for coverage, the application must be filed. The provisions at W. Va. Code, §23-2-5(f), are applicable to this default in providing for restoration of the benefits and protection of the Act, prospectively from the date of complete reporting and payment in full of the employer's delinquency and default liability or from the date of a complete filing of an application for reinstatement with adequate reinstatement deposit.

Default as defined in this rule is not affected or altered by the provisions of 5.5.a. of this rule providing for a grace period, for the first thirty (30) days from and including the date of employment of any employee; except that, if the employer files the application and deposit within thirty (30) days from the first date of employment, the employer may avoid the imposition of interest on payments unpaid when due, penalty premium rate, late reporting or payment penalty or other monetary penalties which may be imposed under law by the division for the employer's omission or failure to file an application for coverage and premium deposit prior to the first date of employment of any employee. Therefore, the provisions of W. Va. Code, §23-2-8, regarding civil liability for the injury or death of an employee, are not affected or altered by provision for such grace period. Furthermore, according to the exception set forth in the last sentence of W. Va. Code, §23-2-1(h), regarding coverage of sole proprietors, partners and corporate officers, notwithstanding the provision for a grace period from the imposition of certain other stated penalties, no sole proprietor, partner or corporate officer who may be lawfully elected out of mandatory coverage under subsections (g) and (h) of W. Va. Code, §23-2-1, may be afforded any benefits of coverage if injured within such thirty day grace period or thereafter until actual subscription occurs through application for coverage prior to the date of injury of such person.

3.11. "Delinquent" means an employer has failed to timely pay premium taxes, to timely file a payroll report, to maintain an adequate premium deposit, to honor **proper** pay orders or to make any other payment due under the terms of this rule or the Act.

a. Proper cause for failure to promptly honor a pay order to a claimant shall include, but not be limited to, those instances where:

A. a self-insured employer fails to receive notice of a properly promulgated pay order,
or

B. those instances in which a pay order:

(a) has been promulgated in substantive error, or

(b) is on its face obviously in error as to the amount due, or

(c) orders the payment of temporary total disability benefits past the date on which the claimant returned to work or was released to return to work by the claimant's attending physician.

3.12. "Dependent" has the meaning ascribed to that term by W. Va. Code, §23-4-10(d).

3.13. "Director" means the executive director of the workers' compensation division, who is appointed by the commissioner and who serves as the chief operating officer of the daily operations of the workers' compensation division, as contained in West Virginia Code, §23-1-4.

3.14. "Division" means the workers' compensation division within the bureau of employment programs as provided for by West Virginia Code, §21A-1-4, and West Virginia Code, §23-1-1 et seq.

3.15. "Domestic services" means services of a household nature performed by an employee in or about a private home of the person by whom he or she is employed. A private home is a fixed place of abode of an individual or family. If a dwelling house is used primarily as a boarding or lodging house for the purpose of supplying board or lodging to the public as a business enterprise, it is not a private home and the services performed therein are not domestic services.

In general, services of a household nature in or about a private home include services performed by cooks, butlers, housekeepers, governesses, maids, valets, baby sitters, care-takers, handymen, gardeners, and chauffeurs of automobile for family use.

The term domestic services shall not include services of a household nature performed by an employee in or about the private home of a person when that employee is employed by someone other than a member of the household. For example, employees of maid services, temporary employment agencies, or other businesses do not provide domestic services under the provisions of this rule.

3.16. "Employee" has the meaning ascribed to that term by West Virginia Code, 23-2-1 and 23-2-1a.

3.17. "Employer" has the meaning ascribed to that term by W. Va. Code §23-2-1, which includes, but is not limited to, any individual, sole proprietor, firm, partnership, limited partnership, limited liability company, joint venture, association, corporation, company, organization, receiver, estate, trust, guardian, executor, administrator, government entity or any other entity regularly employing another person or persons for the purpose of carrying on any form of industry, service or business in this state.

3.18. "Experience modification factor" means an actuarially determined multiplier which is applied to the premium tax base rate and used to determine the standard premium tax.

3.19. "Good standing" with the division means that the employer is not delinquent or in default on its obligations to make reports or payments to the division.

3.20. "Incurred losses" are claims reserves consisting of compensation awards, medical payments, and claims expense payments ~~and reserves~~.

3.21. "Injury" means compensable injuries or illnesses for which reported costs or incurred but not reported costs are incurred by the division within the meaning W. Va. Code, 23-4-1 et seq.

3.22. "Standard premium tax" means the base rate multiplied by the experience modification factor and the number of exposure units. Exposure units means the exposure base divided by the unit of exposure.

3.23. "Owned or controlled" and "owns or controls" means:

~~3.23.a.A. Being a permittee of a surface coal mining operation (as defined under W. Va. Code, §22-3-1 et seq.); or~~

~~AB.~~ Based on instruments of ownership or voting securities, owning of record in excess of 50 percent of an entity; or

~~BC.~~ Having any other relationship which gives one person authority directly or indirectly to determine the manner in which an employer conducts its overall business operations.

3.23.b. The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant employer's operation is conducted:

- A. Being an officer or director of an entity; or
- B. Being the operator of a surface coal mining operation; or
- C. Having the ability to commit the financial or real property assets or working resources of an entity; or
- D. Being a general partner in a partnership; or
- E. Based on the instruments of ownership or the voting securities of a corporate entity, owning of record 10 through 50 percent of the entity.

3.24. "Payments" are obligations of the employer for the purposes of this rule including, but not limited to, the payment of premium taxes, the payment of premium deposits, the payment of any obligations due to be paid by an employer authorized by the division to be a self-insurer, late reporting and payment penalties, interest, and penalty premium rate premium tax.

3.25. "Payroll" means the entire gross wages of all employees, not excluded under provisions of the Act or this rule, or such other wage related exposure base as may be determined by the compensation programs performance council.

3.26. "Premium" and "premium tax" mean the amounts of money due from an employer to the Fund or division as a result of quarterly and other periodic assessments by the division under the provisions of the Act in order to establish, maintain, and replenish the Fund and to pay the expenses of administration of the Fund by the division. "Premium" and "premium tax" includes, but is not limited to, assessments of: premium tax, premium deposit, penalty premium rate premium tax and interest, assessed to all employers; and also, that portion of self-insured premium tax assessed in arrears through benefit payorders to the employer for the employer's claimant employees, on behalf of and for the benefit of the Fund as provided by law, assessed in arrears in lieu of direct, advance premium tax payments to the division.

3.27. "Quarter" means the four calendar quarters: January 1 through March 31; April 1, through June 30; July 1 through September 30; and October 1 through December 31 of each calendar year.

3.28. "Regular subscriber" and "subscriber" mean an employer who obtains coverage under any of the workers' compensation insurance plans offered by the division.

3.29. "Remuneration" means "wages" as defined under the provisions of 26 U.S.C. 3121 of the Internal Revenue Code.

3.30. "Self-insurer" and "self-insured employer" mean employers who are eligible and have been granted self insured status under the provisions of W. Va. Code, §23-2-9.

3.31. "Surplus fund" means that portion of the compensation fund created by West Virginia Code, §23-3-1, which is to be set aside to create and maintain coverage for the catastrophe hazard, the second injury hazard, deficit reduction, and all losses not otherwise specifically provided for by the Act.

3.32. "This rule" means the instant legislative rule designated as 85 C.S.R. 9, "Risk Management."

3.33. "Audited statements" means the financial statements accompanied by an independent auditor's report which provide reasonable assurance about whether the audited employer has presented fairly the financial position, results of operations, and cash flows in conformity with generally accepted accounting principles. This assurance is derived through a systematic process, governed by generally accepted auditing standards, of objectively obtaining and evaluating evidence regarding assertions about economic actions and events to determine whether (1) financial information is presented in accordance with established or stated criteria, (2) the entity has adhered to specific financial compliance requirements, if applicable, or (3) the entity's internal control structure over financial reporting and/or safeguarding assets is suitably designed and implemented to achieve the control objectives.

§85-9-4. Auditing; classifications; and inspections.

4.1. Preservation of records. Every employer subject to the workers' compensation law shall keep, preserve and maintain complete records showing in detail all expenditures for gross wages and the separation of such expenditures in the various classifications of the employer's business. The employer shall keep such additional information necessary to determine classification of the employer's activities as well as other information necessary for a risk assessment. Such records shall be preserved for not less than five (5) years after the respective times of the transaction upon which the records are based. The employer shall retain all records for periods in excess of five (5) years in matters involving disputes with the division until such matter is determined to be resolved by the division.

4.2. Pursuant to W. Va. Code, §23-2-2(a), every employer shall furnish the division, upon request, all information required by the division to ascertain or verify the number of employees employed by the employer during a pertinent period, the names and social security numbers of the employees, the gross wages paid to employees during a pertinent period, occupations of employees, classification information, other information necessary for risk assessment, and payments owed to the division, as premium taxes, premium tax deposits, interest, fees, penalties, or to carry out the various purposes of the Act.

4.2.a. Determinations. The commissioner and the compensation programs performance council may make a determination, consistent with the provisions of 7.2 and 7.3 of this rule to require a periodic listing of all such employees.

4.3. Inspections of records; failure to maintain records. All accounting records, books, records, papers and documents reflecting the amount and the classifications of the gross wage expenditures of an employer, as well as the nature of the business operation, shall be kept available for inspection at any reasonable time by the duly authorized representatives of the division. If any employer fails to keep, preserve and maintain such records and other information as required under the provisions of this section, or fails to make such records and information available for inspection, the division may determine the amount of premium tax due from the employer based upon such information as is available and such findings shall constitute prima facie evidence.

4.4. Auditing records; adjustments. The division shall have the right at any reasonable time to audit any or all books, records, papers, documents, operations and payroll of an employer for the purpose of verifying the correctness of reports made by an employer or such other reports as may be required by State or federal law. The division shall have the right to make adjustments as to risk assessments, including classifications, allocation of gross wage expenditures to classifications, amount of gross wage expenditures, premium tax rates and amount of premium tax.

4.5. In order to inspect the information specified by the Act and this rule, the division may direct that an agent or employee of the division audit the information referred to in this section during the regular business hours of the employer or at another reasonable time ~~whether located at the employer's place or places of business or elsewhere~~ and place within the state of West Virginia and the employer shall permit the audit to occur and shall cooperate with the auditors so that the audit may be successfully completed. Failure to cooperate with such an inspection shall be considered as a placement criteria for placement in the assigned risk plan under the provisions of section twelve of this rule.

4.6. Classifications.

4.6.a. In general, only one risk classification is permitted per policy account. The division shall assign to the employer the classification yielding the highest base rate consistent with the general business operations of the risk being assessed. In the event an employer changes its employment activities to result in a change in risk classification, the employer shall notify the division in writing of such change within thirty (30) days of occurrence.

4.6.b. To qualify for more than one risk classification, the employer shall meet all of the following criteria:

- A. The activities of the additional risk classification are conducted in a separate location;
- B. The employee(s) are not customarily ~~and can not be~~ used interchangeably between the two locations; and
- C. The activities of the additional risk classification are not in support of or incidental to the activities of the existing risk classification.

4.6.c. When the division has assigned multiple classifications for an employer's operations, the employer shall keep an appropriate record showing a correct and verifiable segregation of gross wage expenditures into such classifications. If the employer has failed to keep such record, payroll shall be placed under the assigned classification having the highest rate and the employer shall be assessed the premium tax accordingly.

4.6.d. Determinations. The commissioner and the compensation programs performance council may make a determination, consistent with the provisions of subsection 7.2 of this rule and the procedures for determinations under subsection 7.3 of this rule, to provide for a system of classification other than that described by the provisions of paragraph 4.6.a.

4.7. Misclassifications and reclassifications. Except as provided below, employer classification changes shall be made and become effective upon the first day of the quarter immediately subsequent to the request for classification review, if such request for review is made by the employer, or upon the first day of the quarter immediately subsequent to the discovery of misclassification, if discovered by the workers' compensation division.

4.7.a If misclassification of the employer is the result of either,

- A. Incomplete, inadequate, untimely, or otherwise deficient disclosure by the employer, or
- B. Is the result of a change in the activities of the employer, without written notice to the division of such change, which causes the division to place or maintain the employer's account in an improper classification which results in the employer's payment of insufficient premiums,

then the division shall make the class change retroactively to the first day of the quarter in which such change or deficient disclosure occurred and shall demand payment of the liability resulting from the underpayment of premiums and related penalties and interest. Payment of outstanding liabilities will be required for a period not to exceed the preceding five (5) fiscal years unless fraud or willful intent to mislead the division is determined.

~~4.7.b. In any case in which the division placed or maintained the employer's account in an improper classification which resulted in the employer's overpayment of premiums and where the employer either,~~

~~_____ A. Can show that the employer had made a complete, accurate, and sufficient disclosure in writing through application, class determination study, letter, or other document which should have caused or produced a correct assignment of classification for the account, or~~

~~_____ B. Had given timely written notice of objection to the division of the assigned classification rate,~~

~~_____ then, the class change shall be made retroactively and become effective either (1) upon the first day of the current coverage period or upon the first day of the applicable quarter within the current coverage period, if the employer did not object prior to either such date, or (2) the first day of the coverage period in which the notice of objection was received.~~

4.7.b. If misclassification of the employer results in the overpayment of premiums by the employer, then the division shall make the class change retroactively to the first day of the quarter in which such change occurred. If an overpayment still exists after adjustment, the division shall refund the amount of the overpayment. Payment of refunds shall not exceed the period of the preceding five (5) fiscal years.

4.7.c. If the employer's account is otherwise in good standing, a refund of the applicable overpayment from 4.7.b shall be made to the employer through a credit to the employer's account. If the division determines that the refund amount is materially greater than the employer's premium tax payment of the previous quarter, the employer's account shall be credited and a refund issued for the difference within 30 days of receipt of the employer's credited quarterly report.

If the employer has a security shortage, the division ~~may~~ shall use the refund amount to purchase additional security or annuities to reduce the undersecured employer's risk to the division. This provision does not apply to undersecured employers who have entered into an agreement with the division to obtain the proper level of security and are upholding such an agreement.

4.7.d. When an employer's account is retroactively reclassified and it is determined that premium is due and owing to the division as a result of the adjustment, the employer's account shall not be deemed to be in default or to be delinquent unless the employer fails to pay the premium owed within thirty days of notification or under terms not to exceed thirty-six months. If it is determined that the employer's account was improperly classified as a result of fraudulent or other unlawful actions on the part of the employer, then such employer's account shall be deemed to have been in default as of the date of the first improper premium payment or report. If the employer fails to make payment on the date specified or agreed to by the division, then such

account shall be deemed to have been in default since the first improper or inadequate premium payment or report.

4.8. Records of out-of-state employment. In instances of temporary employment of certain employees without the state, the entire remuneration of those employees shall be included in the payroll reports to the division.

4.9. Either as an addition to or as part of the audit permitted under this rule, the division may convene an administrative hearing or conduct a deposition for the purpose of receiving the information in testimonial or evidentiary form. The commissioner, the executive director, an inspector or a designated hearing officer may issue subpoenas and compel the attendance of witnesses and the production of pertinent books, accounting records, accounts, papers, records, documents, and testimony at any such hearing or deposition. Any such administrative hearing or deposition shall be convened and conducted in accordance with 85 C.S.R.7, "Rules for Selected Hearings," and the division shall have the right to have any employer or officer, agent, or employee of any employer examined under oath or affirmation. A deposition may be held pursuant to this subsection even if a hearing regarding the employer has not been previously noticed or requested; but, in that event, adequate notice of the deposition shall be given to all interested parties known to the division.

4.10. The request for information provided for by the Act, this rule or other rules of the division, the audit provided for by this rule, or the hearing provided for by this rule may be conducted at any time when necessary to carry out the purposes of the Act including when the division has good cause to believe that the employer may be delinquent. Such times may be before the issuance of a notice of delinquency, after the issuance of a notice of delinquency, before or after an employer has defaulted or has been terminated or before, during, or after the implementation of an attempt to collect or enforce upon the employer's delinquency or default or resulting from any risk management assessment. The division will give the employer proper notice and reasonable time to gather the information necessary for the request for information, audit, or hearing.

4.11. When an employer has reported wages of an individual who is not an employee within the meaning of the statute and paid premium taxes thereon, such employer shall, upon proper request being made of the division, and sufficient evidence that the individual in question is not an employee, be entitled to a refund, if an overpayment exists after adjustment, of such premium taxes for a period not to exceed the preceding five (5) fiscal years unless claim liabilities under this employer exist for the individual.

§85-9-5. Employers.

5.1. Duty to register. ~~Every employer operating within the State shall be registered with the division. Any employer exempt from paying premium taxes to the division must provide written documentation of the reason for exemption.~~ Every employer subject to the Workers' Compensation Act (West Virginia Code §23-1-1, et seq.) is required to register and pay premium taxes into the Workers' Compensation Fund for the protection of its employees.

5.2. Use of prescribed forms. Any employer subject to the act and required to subscribe and pay premium taxes to the division for the protection of its employees, as provided in W. Va. Code, §23-2-1 et seq., must use the form or forms designated by the division to subscribe for coverage. All information required by the form or forms must be supplied to the division in accordance with the directions contained on the form or forms and the provisions of this rule.

5.3. Foreign corporations; certificate of authority. Upon application for workers' compensation coverage and prior to work being performed in this state by any employee, a foreign corporation must provide a certified copy of its certificate of authority from the secretary of state of West Virginia, ~~and certified copy of its business registration certificate issued by the tax commissioner under the provisions of chapter eleven of the West Virginia Code authorizing the employer to do business in this state. All other foreign employers must provide a certified copy of its business registration certificate issued by the tax commissioner under the provisions of chapter eleven of the West Virginia Code.~~

~~5.3.a. If the employer is exempt under the corporations law of West Virginia from obtaining a certificate of authority, the employer must provide a certificate of exemption issued by the secretary of state. In case of delay in issuance of either certificate, upon acceptable application without the certificate, the employer may subscribe provisionally. Provisional subscription and effective date of coverage shall be void and of no effect from the first day of provisional subscription if the employer fails to file the certificate within sixty (60) days of the date the employer's application for coverage is received. The employer has no right to notice of the act of voiding upon its failure to file the certificate.~~

5.4. Business registration certificate. Upon application for workers' compensation coverage ~~and prior to the conduct of any business activity being performed in this state by any employee~~, all applicants must provide a copy of the business registration certificate issued by the tax commissioner pursuant to chapter eleven of the West Virginia Code.

5.5. Application. When the duly executed application form or forms have been returned to the division with a check for the required deposit, the employer shall be required to provide the division with any additional or relevant information. The information requested may include, but is not limited to, audited financial statements, as well as any other information necessary to assess the risk being insured. Upon receipt of the application the division shall send notice to the employer of provisional coverage, including provisional classification. Once satisfied that all requirements have been met, the division shall promptly send the employer a notice of the acceptance of his application. The notice shall state the date of such acceptance, which shall be midnight following the day of receipt of all such forms and the satisfaction of all such requirements. The date of acceptance and beginning date of the employer's coverage shall be the same date.

5.5.a. An employer may be allowed a grace period from the division's imposition of monetary penalties resulting from non-compliance with the Act for the first thirty (30) days from and including the date of employment of any employee. If the employer files an acceptable application for coverage and pays an adequate premium tax deposit within thirty (30) days from the first date of employment, the employer may avoid the imposition of interest on overdue payments, penalty premium rate, late reporting or payment penalty or other monetary penalties which may be imposed under law by the division. However, the provisions of W. Va. Code, §23-2-8, regarding civil liability for the injury or death of an employee, are not affected or altered by provision for such grace period. Furthermore, according to the exception set forth in the last sentence of W. Va. Code, §23-2-1(h), regarding coverage of sole proprietors, partners and corporate officers, notwithstanding the provision for a grace period from the imposition of certain other stated penalties, no sole proprietor, partner or corporate officer who may be lawfully elected out of mandatory coverage under subsections (g) and (h) of W. Va. Code §23-2-1, may be afforded any benefits of coverage if injured within such thirty day grace period or thereafter until actual subscription occurs through application for coverage prior to the date of injury of such person.

Such an individual or individuals who exercise ownership and control of an employing entity shall fully disclose the identities of all other entities for which they have or continue to exercise ownership and control.

~~5.5.b. In circumstances where an individual or individuals exercise ownership and control over the employing entity that has made application for coverage under these provisions and where such individual or individuals exercise ownership and control over another business entity or entities that is in default, as defined by the provisions of West Virginia Code, §23-2-5, then such applicant shall be denied coverage under the provisions of this rule until the applicant submits proof that such default has been corrected to the satisfaction of the division.~~

~~A. The division shall notify by certified mail each employing entity which has been denied coverage under the provisions of this rule. Such notice shall contain the reasons for the denial.~~

5.5.b.e. The employer's application and the required financial statements must be signed and sworn to by the president alone or appropriate vice-president and secretary or assistant secretary of the employer, parent or other related business if the employer, parent, or related business is a corporation or limited corporation; or, by all of the partners if the employer, parent or related business is a partnership; or, by all of the general partners if the employer, parent or related business is a limited partnership; or, by all the members if the employer, parent, or related business is a limited liability company; or, by the owner if the employer, parent or related business is neither a corporation, limited corporation, partnership, limited liability company, nor limited partnership.

5.5.c.d. Any employer applying for coverage subsequent to the beginning of operations is required to notify or disclose to the division any and all injuries which have occurred prior to the date of such application or provide an affirmative statement that no injuries have occurred. The division may assess the risks and costs of such injuries at any time for determinations made under the provisions of this rule.

5.6. Evaluations. In reviewing an employer's application for coverage, the division shall make such evaluations, assessments and determinations necessary to carry out the provisions of this rule and the Act.

§85-9-6. Employees covered; employers required to subscribe; coverage elections; assignment.

6.1. General. An employer's subscription for workers' compensation coverage must cover all of its employees who are mandated coverage and benefits by law.

6.1.a. Independent contractors. Services performed by an individual for wages are employment subject to this rule unless and until it is shown to the satisfaction of the division that such individual has been and will continue to be free from control or direction over the performance of such services, both under the contract of service and in fact.

~~6.1.a. Independent contractor. Independent contractors are not considered to be employees. The division shall consider the following factors in its determination of whether an individual is an independent contractor.~~

~~A. Such individual has been and will continue to be free from control or direction over the performance of such services, both under the contract of service and in fact.~~

~~B. Such individual has not received any form of training either by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods.~~

~~C. Significant integration of the workers' services into the business operations of the person or persons for whom the services are performed does not exist.~~

~~_____ D. Such individual does not perform services personally.~~

~~_____ E. The person or persons for whom the services are performed do not hire, supervise and pay assistants for the service provider.~~

~~_____ F. A continuing relationship, where work performed is frequently recurring even in irregular intervals, between the worker and the person or persons for whom the services are performed does not exist.~~

~~_____ G. The person or persons for whom work is performed have not established set hours for the service provider.~~

~~_____ H. Such person does not devote substantially full time to the business of the person or persons for whom the services are performed.~~

~~_____ I. The work performed by such individual does not occur on the premises of the person or persons for whom the services are performed. And, the person or persons for whom the work is performed do not have the right to compel the service provider to travel a designated route, to canvas a territory within a certain time, or to work at specific places.~~

~~_____ J. The person or persons for whom services are performed do not exercise or retain the right to control the order or sequence of work performed or establish routines and schedules.~~

~~_____ K. Such person is not required to submit regular or written reports to the person or persons for whom the services are performed.~~

~~_____ L. Payments for the services performed do not occur on an hourly, weekly, monthly or some other regular basis unless done so as only a convenient way of paying a lump sum, agreed upon as the cost of the job.~~

~~_____ M. Such person is not directly paid for business and/or traveling expenses.~~

~~_____ N. The person or persons for whom the services are performed do not furnish significant tools, materials, and other equipment.~~

~~_____ O. Such person has significantly invested and maintained facilities for the purposes of performing services.~~

~~_____ P. Such individual can realize a profit or a loss as a result of the services provided.~~

~~_____ Q. Such individual performs more than de minimis services for a multiple of unrelated persons or firms at the same time.~~

~~_____ R. Such individual makes services available to the general public on a regular and consistent basis.~~

~~_____ S. The person or persons for whom the services are performed do not have the right to discharge the service provider, provided that the specifications of the contract are met.~~

~~_____ T. Such person does not maintain the right to end the relationship with the person or persons for whom the services are performed at anytime the service provider wishes.~~

6.1.b. Seasonal employers for purposes of West Virginia Code, §23-2-5(a)(3), shall be determined by the division on a case-by-case basis. Each employer requesting "seasonal employer" status shall demonstrate to the division the seasonal nature of its employment over a two-year minimum period. The employer requesting "seasonal employer" status shall petition the division sixty (60) days prior to the beginning of the coverage period for which such status is requested.

6.2. Elections to not provide coverage. In accordance with the provisions of West Virginia Code §23-2-1(g), certain Certain employers may elect not to provide coverage to certain individuals deemed employees within the meaning of the Act, as follows:

6.2.a. An employer, which is a subchapter S corporation under the Internal Revenue Code, of employees, who are officers of and stockholders in the subchapter S corporation;

6.2.b. An employer, which is a sole proprietorship, of an employee, who is the owner of the sole proprietorship;

6.2.c. An employer, which is a partnership, of employees, who are members of such partnership;

6.2.d. An employer, which is a corporation or association, of employees, who are corporate officers or members of the board of directors of the association or corporation. Such officers shall consist of:

A. A president, a vice president, a secretary, and a treasurer, each of whom shall be elected by a board of directors at such time and in such manner as prescribed by its bylaws, and

B. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws: Provided,

~~B.~~ (a) Such other officers and assistant officers ~~not enumerated in 6.2.d.A. of this rule~~ may not be elected out of coverage by an employer if such employee:

(a) (A) Is engaged in a dual capacity of having duties and responsibilities for work ordinarily performed by an officer and also having duties and work ordinarily performed by a worker, administrator, or employee who is not an officer;

(b) (B) Is ordinarily engaged in performing the duties of a worker, an administrator, or an employee who is not an officer and receives pay therefore in the capacity of an employee; or

(c) (C) Is engaged in an employment palpably separate and distinct from his or her official duties as an officer of the association or corporation; and

6.2.e. An employer, which is a limited liability company, as defined under the provisions of West Virginia Code §31-1A-1, et seq., of employees, who are managers and members of the limited liability company.

A. Such managers and members of the limited liability company may not be elected out of coverage by an employer if such employee:

(a) Is engaged in a dual capacity of having duties and responsibilities for work ordinarily performed by a manager and also having duties and work ordinarily performed by a worker, administrator, or employee who is not a manager;

(b) Is ordinarily engaged in performing the duties of a worker, an administrator, or an employee who is not a manager and receives pay therefore in the capacity of an employee; or

(c) Is engaged in an employment palpably separate and distinct from his or her official duties as a manager of the limited liability company.

6.3. Manner of notification. In the event of an election under subsection 6.2 of this rule, the employer shall serve upon the division written notice naming the positions not to be covered and the names and social security numbers of the persons occupying those positions, and shall not include such "employee's" gross wages for premium purposes in future payroll reports. Such partner, member/manager, proprietor or corporate or executive officer shall not be deemed an employee within the meaning of the Act after such notice has been served.

6.3.a. Elections not to be covered made under subsection 6.2 of this rule are effective for the next coverage period and each coverage period thereafter without subsequent election.

6.3.b. Elections not to be covered are valid only for the persons named in the written notice to the division. Such an election is not valid for any person who may later hold the same position, office or title until an amendment to the election is made in accordance with this rule.

6.3.c. Amendments to an election may be made only for the purpose of:

A. Changing the named person for any office or position previously reported on the election; or

B. Making an election for persons who were not previously employed as a sole proprietor, partner, officer, or member of the board of directors on the date the election was made; or

C. Making an election upon application to become a subscriber to workers' compensation coverage; or

D. Adding a person who has previously elected not to be covered under the provisions of subsection 6.2 of this rule if the division receives written notification sixty (60) days prior to the coverage period in which coverage is sought. If written notification is not received by the division sixty (60) days prior to the coverage period in which coverage is sought, then coverage shall not be extended to such person requesting coverage beginning that coverage period. The written notification shall clearly identify the coverage period in which coverage is sought to begin.

6.3.d. Amendments to the annual election may not be made in circumstances where a named employee has only changed corporate offices during the course of a coverage period.

6.4. If an employer has not subscribed to the compensation fund even though it is obligated to do so under the Act, then any partner, proprietor or corporate or executive officer shall not be covered by the Act and shall not receive the benefits of the Act.

6.5. Election to provide coverage. An employer may elect to provide coverage for employees who are exempt from the mandatory coverage provisions of West Virginia Code, §23-2-1 & -1a. An employer may elect coverage for its employees if it employs:

6.5.a. Employees engaged in domestic services; or

6.5.b. Five (5) or fewer full-time employees in agricultural service; or

6.5.c. Employees without the state except in cases of temporary employment without this state; or

6.5.d. Not more than three (3) employees and the period of employment is temporary, intermittent and sporadic in nature and does not exceed ten (10) calendar days in any calendar quarter; or

6.5.e. Employees of a church; or

6.5.f. Employees engaged in organized professional sports activities, including trainers and jockeys engaged in thoroughbred horse racing; or

6.5.g. Employees of volunteer rescue squads or volunteer police auxiliary units organized under the auspices of a county commission, municipality, or other government entity or political subdivision; or, area or regional emergency medical services boards of directors in furtherance of the purposes of the emergency medical services act of W. Va. Code, §16-4C-1 et seq.: Provided, That should any of the employers described in 6.5.g. have paid employees, then to the extent of those paid employees the employer must subscribe to and pay premium taxes into the workers' compensation fund based upon the gross wages of the paid employees.

6.6. Employees who are the subject of a default employer's voluntary election to provide them the benefits afforded by subscription to the compensation fund shall have such protection terminated at the time of their employer's default.

6.7. Manner of notification. In the event of an election under subsection 6.5 of this rule, the employer shall report and include such employee's gross wages for premium tax purposes in required payroll reports.

6.8. Election by foreign businesses. Foreign employers whose employment in this state is to be for a definite or limited period less than ninety (90) days may choose to subscribe and pay into the workers' compensation fund the premium taxes provided under the Act.

6.8.a. Such an employer shall make application for coverage in the manner provided by this rule and the Act.

6.8.b. Such an employer shall furnish a statement to the division under oath showing the probable length of time the employment will continue in this state, the character of the work, an estimate of the monthly payroll and any other information which may be required by the division.

6.9. Extra-Territorial coverage.

6.9.a. The entire gross wages of employees, whose contracts of hire have been consummated within the borders of West Virginia, whose employment involves activities both within and without the borders of West Virginia, and where the supervising office of the employer is located in West Virginia, shall be included in the payroll report.

6.9.b. The remuneration of employees of other than West Virginia employers, who have entered into a contract of employment outside of West Virginia to perform transitory services in interstate commerce only, both within and outside the boundaries of West Virginia, shall not be included in the payroll report.

6.9.c. The workers' compensation division respects the extra-territorial right of the workers' compensation insurance coverage of an out-of-state employer for his regular employees, whose contracts of hire have been consummated in some state other than West Virginia, while performing work in the state of West Virginia for a temporary period not to exceed ninety (90) days. Employees whose contracts of hire are consummated at a job site in West Virginia or employees who have been hired to work specifically in West Virginia must be protected for workers' compensation insurance under the West Virginia workers' compensation fund.

6.9.d. Where there is a conflict with respect to the application of the workers' compensation law, the provisions of West Virginia Code, 23-2-1c, apply. The employer requesting coverage under such provisions shall supply the names and social security numbers of each employee sought to be covered under such provisions.

6.10. Clergy. Whenever there are churches in a circuit which employ one individual clergyman and the payments to such clergyman from such churches constitute his or her full salary, such circuit or group of churches may elect to be considered a single employer for the purpose of premium payment and reporting to the division.

6.11. Limited partner. A "limited partner" as defined and provided by the Uniform Limited Partnership Act (§§47-9-1 et seq., W. Va. Code) is not an employee of an employer which is a limited partnership subject to the mandatory or elective provisions of the Act, unless that person is employed in the service of the limited partnership for the purpose of carrying on the industry, business, service or work in which it is engaged.

6.12. Investors. A person who is solely an investor and who does not participate in the direction, administration, or control of a business or venture and its activities or investments is not an employee of an employer subject to the mandatory or elective provisions of the Act, unless that person is employed in the service of the business or venture for the purpose of carrying on the industry, business, service or work in which it is engaged.

6.13. Members. A "member" as defined and provided by the West Virginia Limited Liability Company Act (W. Va. Code, §§31-1A-1, et seq.) is not an employee of an employer which is a limited liability company subject to the mandatory or elective provisions of the Act, unless that person is employed in the service of the limited liability company for the purpose of carrying on the industry, business, service or work in which it is engaged.

~~6.14. Assignment. The division has the authority to assign at any time an employer to any workers' compensation insurance plan offered under the provisions of this rule.~~

~~6.15~~**14. Correspondence.** All correspondence to the division from an employer or its representative **related to an employer's workers' compensation account, premiums, or coverage issues** shall contain the employer's policy number as well as the employer's federal employer identification number.

§85-9-7. Ratemaking

7.1 Exposure base. Premium taxes shall be based on the total gross wages paid or payable to employees covered by the Act. In accordance with the provisions of 7.2, the compensation programs performance council may provide for a different exposure base consistent with the definition of remuneration or such other exposure base as it may determine.

7.1.a. Except as modified by the compensation programs performance council under the provisions of 7.2, "gross wages" means all wages paid to employees, whether payable in money or other valuable consideration, and shall include salaries, bonuses, commissions, profit sharing, and the reasonable money value of board, rent, housing, lodging and other goods and services.

7.2. Determinations. The compensation programs performance council shall have the authority to make the following determination or determinations at any time and from time to time in accordance with the procedures set out in subsection 7.3 of this rule. Such determinations shall be consistent with the duty of the compensation programs performance council to fix and maintain the lowest possible rates of premium taxes consistent with the maintenance of a solvent workers' compensation fund and the reduction of any deficit that may exist in such fund and in keeping with their fiduciary obligation to the fund.

7.2.a. Classify into classes the employers subject to the Act.

7.2.b. Restructure classes and create or eliminate classes.

7.2.c. Prepare a premium tax rate schedule which shall specify the base rate for each classification.

7.2.d. Adjust the premium tax rate schedule in whole or in part.

7.2.e. Determine the expected loss rate to be used in calculating expected losses which are used to derive the experience modification factor.

7.2.f. Determine the method for limiting losses in the experience modification factor formula or determine that all losses be used in the experience modification factor formula.

7.2.g. Determine the methodology of calculating the experience modification factor and the credibility assigned to the employer's loss exposure.

7.2.h. Employ various methodologies, such as accident year losses in the calculation of base rates and experience modification factors.

7.2.i. Using claims costs incurred (both awarded and incurred but not reported) as the basis, determine the methodology for the calculation of the second injury assessment, the methodology for assessment of administrative costs, the methodology to assess deficit reduction costs, and such other costs pertinent to the determination of required revenues.

7.2.j. Determine a rating plan for adverse risk employers.

7.2.k. Determine the estimated future return on investment.

7.2.l. Determine the amount of premium tax which is assessed to reduce any deficit that may exist in the workers' compensation fund.

7.2.m. Determine the annual statement components and the time frames for distributing the annual statement.

7.2.n. Determine such other matters as the compensation programs performance council deems appropriate in the exercise of its ratemaking authority.

The division shall make the necessary expenditures to obtain technical assistance and statistical information or such other necessary information to assist the compensation programs performance council in the determinations to be made under this subsection.

7.3. Procedures for determinations. Determinations made by the compensation programs performance council under the provisions of subsection 7.2, shall be made in the following manner.

7.3.a. The compensation programs performance council shall make any determination or determinations at a public meeting or meetings held in accordance with the provisions of 85C.S.R.14, "Procedural Rules for the Compensation Programs Performance Council."

7.3.b. Such determinations shall be filed with the office of the secretary of state for publication in the state register pursuant to the provisions of W.Va. Code, §29A-2-1 et seq.

7.3.c. Such determinations shall be filed with the office of the secretary of state at least thirty (30) days prior to the first day of the quarter in which the determination or determinations become effective.

7.4. Computation of standard premium tax. The premium tax assessed to each employer shall be calculated by multiplying the number of exposure units, the specific base rate for the employer's class, and the experience modification factor (EMF).

$$\text{Exposure Units} \times \text{Base Rate} \times \text{EMF} = \text{Standard Premium Tax}$$

An employer meeting the criteria in subsection 7.4.b shall be experienced rated. An employer who is not eligible for experience rating shall have an EMF of one and shall be referred to as a base rated employer.

7.4.a. Computation of standard premium tax ; base rated employer.

Example, Employer A has \$20,000 of payroll. Employer A's class rate is \$5 per \$100 of payroll. Employers A's exposure units are calculated:

$$\begin{array}{rcl} \text{Total Payroll} \div \text{Payroll Unit} & = & \text{Exposure Units} \\ \$20,000 \div \$100 & = & 200 \text{ Exposure Units} \end{array}$$

Employer A's premium tax assessed at the base rate is calculated:

$$\text{Exposure Units} \times \text{Base Rate} \times \text{EMF} = \text{Standard Premium Tax}$$

$$200 \quad \times \$5 \quad \times 1 = \$1000$$

7.4.b. Computation of standard premium tax; experienced rated employer. The workers' compensation division recognizes the existence of variability among the employers within each premium tax class. The division shall determine standard premium taxes for eligible employers by utilizing experience modification factors calculated in accordance with the following methodology and principles.

7.4.b.A. Eligibility. To be eligible for experience rating, an employer:

(1) Shall have had an account with the division for the full experience period.

(2) Shall have \$1,500 in "expected losses" as defined under subparagraph 7.4.d.B.

7.4.c. Experience period. The experience period used to determine experience modification factors shall be ~~the three fiscal years prior to the fiscal year during which the annual rate calculations are made. For example, the experience period used to determine the experience modification factor for the fiscal year ending June 30, 1997, shall be the fiscal years ending June 30, 1993, June 30, 1994, and June 30, 1995.~~ an experience period deemed appropriate by the compensation programs performance council to capture the necessary claims information. This period may vary between classifications dependent on the risk and nature of the business.

7.4.d. Calculation of experience modification factor. The experience modification factor shall be calculated in accordance with the following formula.

$$M = (A/E) \times C + (1 - C) + (L \times C)$$

Where,

A is the actual reported loss;
E is the expected losses;
C is the credibility factor; and
L is the loss elimination ratio.

A. "A" or "actual reported losses" means paid losses plus case reserves incurred on a fiscal year basis.

B. "E" or "expected losses" means the result generated by transferring the selected incurred loss development factor into an implied percentage of reported losses and applying it to the expected ultimate losses (loss cost multiplied by exposure).

C. "C" or "credibility" means the result calculated as a function of the expected losses over the previous three years.

D. "L" or "loss elimination ratio" means the calculation used to offset (on average) the impact of limiting the losses to the maximum single loss. In order to minimize the impact of infrequent high severity claims, a maximum at which claim occurrences are capped will be based on the following formula:

$$A(\max) = S \times (E/C)$$

Where,

A(max) is the maximum single reported loss;
E is the expected loss;
C is the credibility factor; and
S is the swing factor.

E. "S" or "swing factor" is a cap on the increase of the experience modification factor resulting from a single occurrence. The swing factor may fluctuate by class and will be determined in accordance with subsection 7.2 and 7.3 of this rule.

7.4.e. Computation of standard premium taxes.

Example, Employer B has \$20,000 of payroll. Employer B's class rate is \$5 per \$100 of payroll. Employer B's experience modification factor is 1.25. Employer B's standard premium tax is calculated as follows:

Total Payroll ÷ Payroll Unit = Exposure Units

$$\$20,000 \div \$100 = 200$$

$$\begin{array}{rcl} \text{Exposure Units} \times \text{Base Rate} \times \text{EMF} & = & \text{Standard Premium Tax} \\ 200 \times \$5 \times 1.25 & = & \$1250 \end{array}$$

7.5. Premium tax surcharges and credits. The division shall apply any applicable surcharge or credit to an employer's premium tax as determined under the provisions of this rule and in accordance with the following formula:

Exposure Units x Base Rate x EMF x (1 + Premium Tax Surcharge) or (1 + Premium Tax Credit) = Premium Tax

If employer B as described in section 7.4.e has a premium tax surcharge of +30%, employer B's premium tax is calculated as follows:

Exposure Units x Base Rate x EMF x (1 + Premium Tax Surcharge) = Premium Tax

$$200 \times \$5 \times 1.25 \times (1 + .30) = \$1625$$

If employer B as described in section 7.4.e has a premium tax credit of -30%, employer B's premium tax is calculated as follows:

Exposure Units x Base Rate x EMF x (1 + Premium Tax Credit) = Premium Tax

$$200 \times \$5 \times 1.25 \times (1 + (-30)) = \$875$$

7.6. Annual statement. The division shall provide to each employer consistent with the determination under 7.2 and employer's statement detailing the activity in the employer's account for that coverage period. The employer's statement shall include, but not be limited to, the following:

7.6.a. ~~The name of each of the employer's employees for whom costs were incurred during the calendar year and the amount of such costs paid during the period covered by the employer's statement; The paid and incurred costs of the employer's claims that occurred during the experience periods underlying their rate calculation;~~

7.6.b. Individual experience modification factor determination information and the effect of such application of the experience modification factor on the premium tax; and

7.6.c. Amounts calculated to fund the deficit and provide for administrative costs of the division.

7.7. Notification. The division shall notify every employer whose premium tax is affected under the provisions of section seven (§85-9-7) of this rule. The division shall provide such notice, in accordance with the provisions of section fifteen (§85-9-16) of this rule, to each affected employer at least thirty (30) days prior to the period for which the rate change is applicable.

§85-9-8. Guaranteed cost plan.

8.1. Description. Employers who subscribe to the guaranteed cost plan are afforded coverage as required by the Act. Coverage includes insurance for all covered losses for a calculated premium tax. Such premium tax includes contributions for the retirement of any deficit and the costs of administration of the Fund.

8.2. Eligibility. All employers shall be eligible for and assigned to the guaranteed cost plan with the following exceptions: exception of employers who qualify for and are granted an alternative plan under the provisions of this rule.

~~(1) Employers who qualify for and are granted an alternative plan under the provisions of this rule; and~~

~~(2) Employers who are required by the division to enroll in an alternative plan under the provisions of this rule.~~

8.3. Evaluation. The purpose of the division's evaluation is to assess the risk of the employer and determine the proper classification and premium tax for the employer. The division shall review and evaluate each application received as part of the registration and application process under the provisions of section five of this rule. The division shall review such forms to evaluate the accuracy and completeness of information, correctness of classification information, payroll reports and deposits, and such other materials deemed necessary by the division. As part of the evaluation, the division may require payroll and classification audits, as well as loss prevention inspections, to more accurately assess risk and charge appropriate premium taxes.

8.4. Classification of employer operations. The division shall classify every employer according to the risk of their operations and in accordance with the classification schedule determined under the provisions of section seven of this rule.

8.5. Assignment of premium rates. Under the applicable provisions of this rule, the division shall assign to each employer a base rate of premium tax or a merit rate of premium tax.

8.6. Ongoing authority. The division shall maintain the authority to review and reevaluate all information and actions related to the employer's guaranteed cost plan from time to time and at any time as the division determines.

8.7. Compliance. An employer who subscribes or is assigned to the guaranteed cost program shall comply with all applicable provisions of this rule. An employer failing to provide information necessary to the assessment of risk within the time frame requested by the division may be assigned to the adverse risk plan. Should such assignment be made, no refunds will be made upon subsequent provision of the information.

§85-9-9. Deductibles.

9.1. Description. The deductible plan requires employers to pay the costs of a claim or claims up to a specified limit in return for receiving a discount on premium tax liability. The deductible plan is a loss sensitive plan which shows immediate results to an employer and places emphasis on safety and accident prevention in the workplace.

9.2. Election. If the division determines an employer meets the financial responsibility requirements and procedural requirements set forth in this rule, an employer may elect coverage under a deductible plan

9.3. Eligibility. Coverage under a deductible plan is available to employers who request such coverage and satisfy all of the following eligibility requirements.

9.3.a. The employer must be in good standing as defined by this rule.

9.3.b. The employer must meet such standards of financial strength and stability to show evidence of its ability to cover all costs of the deductible plan.

9.3.c. The employer must fulfill requests of the division for required security.

9.3.d. The employer must not have been in default during the three years prior to the application for coverage under a deductible plan.

9.3.e. The employer cannot have entered into a reinstatement agreement for payment of premium taxes due the division for the five rating years preceding the beginning date of the deductible policy year.

9.3.f.. The employer must be in active status on the first day of the policy year.

9.3.g. The employer must have a minimum of three year's experience.

9.3.h. The employer must be in compliance with all other elements of the workers' compensation Act.

9.3.i. An employer requesting a deductible plan must have a tax liability rating of A or B.

9.4. Application.

9.4.a. An employer may apply for coverage under a deductible plan by filing with the division an application for the deductible plan in the form prescribed by the division. The application must be completed in its entirety, including but not limited to the selection of a deductible amount. The absence of pertinent information will result in the application being rejected.

9.4.b. A disclosure of the employer's management and financial structures, notice of the type of security the employer intends to obtain to secure the deductible plan risk, and the employer's financial statements for the three (3) fiscal years preceding the date of application must be attached to the application. The division may require audited financial statements.

A. The employer's application and the required financial statements must be signed and sworn to by the president alone or the vice-president and secretary or assistant secretary of the employer, parent or related business if the employer, parent or related business is a corporation or limited corporation; or, by all of the partners if the employer, parent or related business is a partnership; or, by all of the general partners if

the employer is a limited partnership; or, by all the members if the employer, parent, or related business is a limited liability company; or, by the owner if the employer is neither a corporation, limited corporation, partnership, limited liability company, nor limited partnership.

B. If an employer does not have audited financial statements for the three years preceding the date of application, the employer must submit a financial statement prepared by an outside accounting firm which addresses each of the three fiscal years immediately preceding the date of application or the period for which the employer has existed, whichever is a shorter period. The division shall not be required to accept unaudited financial statements.

C. In the case where the applicant is a government employer, the criteria used to determine financial stability, guarantees, and security may be modified to accommodate for governmental accounting and other issues related to a going concern. Any modifications allowed by the division in these cases will take into consideration the risk to the division.

9.4.c. The employer may provide the division with any additional information deemed relevant to its financial stability. After reviewing the application and financial statements, the division may request additional information from the employer relevant to the employer's financial stability. The applicant must provide the requested information.

9.4.d. The employer applying for coverage under the deductible plan shall pay to the division a nonrefundable application processing fee at the time the application is filed. A fee schedule shall be determined by the division according to the terms of the deductible.

9.4.e. An employer who applies for coverage under the deductible plan shall apply for coverage under this plan at least 45 days prior to the beginning of the coverage period. If the application, and security are approved by the division, the coverage under the deductible plan will become effective on the first day of the coverage period.

A. When application for coverage under a deductible plan is filed, the division will review the application and inform the employer if there is a need for additional information. The employer must provide the division with the additional information in order to complete the application process. The division will render a decision approving or disapproving the application and defining the security requirements. The employer will have sixty (60) days from the date of notification to obtain adequate security as defined under the provisions of this section.

B. If the employer is unable to obtain adequate security, as defined by the division, within the sixty (60) day period, the application for coverage lapses. If the employer desires to reapply, the employer ~~must~~ may be required to begin the application process again and pay the nonrefundable application processing fee.

9.4.f. Employers applying for coverage under a deductible plan must continue to make timely premium payments under its current plan or other required payments for its workers' compensation risk until the deductible plan is approved by the division and the status is effective.

9.5. Division's review of the application for coverage under a deductible plan.

9.5.a. In reviewing the employer's application for coverage under a deductible plan, the division shall assess the risk being insured, including the employer's ability to meet its obligations under the Act.

9.5.b. In assessing the employer's application, the division shall review and evaluate the financial statements filed with the application, the employer's workers' compensation loss experience, and other information.

9.5.c. If an employer relies on the audited financial statements of its parents to be granted coverage under a deductible plan, then the parent company shall provide a parental guaranty in a form acceptable to the division.

9.5.d. The division shall review each application to evaluate the accuracy and completeness of information, correctness of classification information, payroll reports and deposits, and such other materials deemed necessary by the division. As part of the evaluation, the division may require payment and classification audits, as well as loss prevention inspections, to more accurately assess risk and charge appropriate premium taxes.

9.6. Security and bond.

9.6.a. A security schedule shall be determined by the division according to the terms of the deductible plans. The division may direct that this amount be increased or decreased in the future.

9.6.b. The employer shall post security or bond in an amount sufficient to meet all of its obligations to the division, subject to the provisions of subsection 9.6.f and as defined by the Act and this rule, during the coverage period of the deductible plan. At any time that good cause exists to believe that the bond or security is no longer sufficient to meet the employer's reasonable foreseeable obligations, the division shall require the employer to post additional or supplemental security or bond to meet these obligations.

9.6.c. There are several acceptable types of security and bond including, but not limited to, occurrence type security or bond, marketable securities, letters of credit and premiums assessed by the division to insure such risk. The division has the discretion to find that a particular type of security or bond is acceptable. Requirements for particular types of security or bonds are contained in the provisions of 13.6.c.A., - C. and are made applicable hereto.

9.6.d. Employers applying for coverage under a deductible plan must meet the security requirements defined by the division. The amount of security required by an employer seeking coverage under a deductible plan shall be based upon, but not be limited to, such criteria as the employer's financial strength including excess liability insurance and the employer's demonstrated loss experience. A demonstrated loss experience includes general workers' compensation loss experience, second injury reserve loss experience and catastrophe reserve loss experience.

9.6.e. Each employer who obtains coverage under a deductible plan shall annually file a renewal application to continue the privilege of insurance under a deductible plan. Such an application shall be filed in accordance with the provisions of this rule in subsection 9.4 in the form supplied by the division. At the time the application for continuation of the privilege is filed, or sooner as an individual case may require, the division shall review the employer's current financial status and security requirements. The division will notify the employer of the results of an annual review, if a review is performed.

If the division determines that the security requires adjustment in light of the employer's current financial status, the division may adjust the security requirements. The division shall utilize the review procedure set forth in this section to make the security requirement determination.

A. If the division determines that an employer who obtains coverage under deductible plan has insufficient security or bond, the division shall enter an order directing the employer to increase its securities or bonds by the amount needed to reach the adequate and sufficient level for all time periods originally intended to be covered by the inadequate or insufficient security or bond. An inadequate or failed security or bond includes, but is not limited to instances where the entity behind the security or bond is no longer a viable entity or, for whatever reason, can no longer meet its obligations.

The division shall provide a reasonable amount of time for the employer to obtain the increased or added security or bond; however, the period shall not exceed ninety (90) days from the date of the division's order. The increased security or bond must meet the requirements set forth in subsection 9.6 of this rule.

B. The employer's failure to obtain additional bond or security, as required by the division, may result in a revocation of the privilege of obtaining coverage under a deductible plan and termination of the employer's deductible plan, the reassignment of the employer to another workers' compensation insurance plan, and/or the imposition of additional premiums to insure against such risk. The division shall issue a notice specifying the effective date of any such action or actions.

C. If the division has not already determined that a decreased adjustment is merited, an employer may file a written petition with the division for a downward adjustment of its security requirements for purposes of coverage under a deductible plan. The division may request additional information from the employer, as it considers necessary. The division shall render a written decision on the petition within ninety (90) days of receipt of the petition, and if it is granted, the division shall set forth the terms for the new security requirements in the written decision.

9.6.f. The division may develop a sliding scale to determine the amount of security required to obtain coverage under a deductible plan.

9.7. Initial computation.

9.7.a. In accordance with the provisions of subsections 7.2 and 7.3, the commissioner and the compensation programs performance council shall make the following determinations regarding deductible plans:

- (1) The composition of employer hazard groups;
- (2) The number of employer hazard groups;
- (3) The premium range categories;
- (4) The premium tax discount for each classification; and
- (5) The size of the deductible.

9.7.b. The determinations shall be reduced to a table or tables to assist in the calculation of premium tax.

9.7.c. The premium tax amount payable by an employer subscribing to the deductible plan shall be a function of the table or tables in 9.7.b and the employer's standard premium tax.

9.7.d. Form of deductibles.

A. All deductible contracts entered between the division and employers, where the per claim deductible amount is less than twenty thousand dollars (\$20,000), shall be in the form of reimbursable deductibles. The division shall pay all costs of the claim or claims and seek reimbursement from the employer by the issuance of a pay order payable to the division. All incurred costs shall be utilized to determine the employer's experience modification factor notwithstanding the employer's payment of deductible amounts.

B. All deductible contracts entered between the division and employers, where the per claim deductible amount is \$20,000 or greater, shall be, at

the option of the employer, either in the form of a reimbursable deductible or in the form utilized by self-insured employers.

If the employer chooses a reimbursable deductible, the division shall pay all costs of the claim or claims and seek reimbursement from the employer by the issuance of a pay order payable to the division.

If the employer chooses the form utilized by self-insured employers, the employer shall pay all costs of the claim or claims up to the deductible amount in the same manner and subject to the same administrative payment rules as a self-insured employer.

All incurred costs shall be utilized to determine the employer's experience modification factor notwithstanding the employer's payment of deductible amounts.

9.8. Maintaining deductible plan status.

9.8.a. Each employer who obtains coverage under a deductible plan shall annually file a renewal application to continue the privilege of obtaining coverage under a deductible plan. The renewal application shall be in a form prescribed by the division and shall be accompanied by all application materials required under the provisions of subsection 9.4.

The employer must provide the application to the division at least forty-five (45) days prior to the expiration of the coverage period. The employer status as a subscriber to a deductible plan shall continue on a year-to-year basis so long as the employer continues to maintain the requisite financial standing and continues to satisfy the other requirements imposed by the Act, this rule, any other pertinent rule, and any order of the division. If necessary, in order to ascertain whether the employer has met and can continue to meet all of the requirements and obligations for maintaining deductible plan status, the division may conduct an audit of all accounting records, books, records, papers, and documents of the employer.

9.8.b. The division may suspend or terminate an employer's deductible plan status if the employer fails at any time to comply with the requirements of the Act, this rule, any other pertinent rule, or any order of the division. The division shall provide the employer with written notice of the lack of compliance and give the employer 30 days to respond. Lack of resolution within this thirty (30) day period will result in of the suspension or termination. Suspension or termination shall take effect ~~even with~~ thirty (30) days after the date of notice where the matter has not been resolved.

9.9. Transfers and terminations. Transfers of business assets as well as successor business obligations are provided for in W. Va. Code, §§23-2-14, 23-2-15 and section seventeen of this rule.

9.9.a. An employer may not voluntarily terminate a deductible plan during the coverage period.

9.9.b. The division will review the employer's security and bond requirements and make an appropriate adjustment to the requirements, as set forth in this rule.

9.9.c. Depending on the nature of the modification of business, the division may require the employer to pay a fee. The fee is assessed to offset the cost incurred to perform any reviews, including actuarial reviews, to determine any new or additional exposure which the modification may cause.

9.9.d. If the modification causes an employer to no longer qualify for the privilege of obtaining coverage under a deductible plan, the division shall have the authority to revoke the deductible plan status due to changes arising from the modification of business. Settlement of estimated liability at the time of revocation shall be determined by the division.

9.10. Administrative reports and fees.

9.10.a. An employer who obtains coverage under a deductible plan acknowledges its obligations to continue to make all payments and make all reports required by the Act or by the rules adopted by the division.

§85-9-10. Group retrospective rating plan.

10.1. Description. The division shall offer a plan for workers' compensation coverage to groups of employers. The premium tax for this plan will be determined and adjusted periodically according to the group retrospective rating plan described herein.

10.2. Eligibility. In establishing a group for group rating purposes, the sponsoring group organization or individual employers in the group must satisfy all of the following requirements:

10.2.a. All of the employers within the group must be members of the sponsoring organization. The sponsoring organization must have been in existence for at least two years prior to the last date upon which the group's application for coverage is filed with the division.

10.2.b. The division shall require the organization to document its purpose by its charter, by-laws, or other evidence. The sponsoring organization shall have duly elected officers. So long as all of the other criteria of this rule are satisfied, a parent corporation may be a sponsoring organization and, if it qualifies under the criteria of this rule, a member of a group of its subsidiary corporations for group rating purposes.

10.2.c. The employers in the organization must be in the same classification code. Classification group at the time of this rule's adoption refers to the 91 classification codes used to distinguish the different industries for the base rate calculations. The compensation programs performance council has the authority at any time to change the definition of classification group in accordance with the determination provisions of 7.2 of this rule. A sponsoring organization may sponsor more than one group.

10.2.d. The group of employers must consist of at least two individual risk members and the aggregate workers' compensation premiums of the members are, as determined by the division, expected to exceed ~~\$250,000~~ \$500,000 dollars during the coverage period.

10.2.e. The formation and operation of the group program in the organization ~~must substantially improve accident prevention~~ **shall be required to provide a written plan for a safety and loss control program** and claims handling for the employers in the group. The division shall require the group to document its plan or program for these purposes and have the plan or program approved by the division. Groups reapplying annually for group coverage shall document and submit the results of prior programs.

10.2.f. Each employer seeking to enroll in a group for workers' compensation coverage must have active workers' compensation coverage according to the following standards:

A. Unless a dispute of the obligation has been lodged by the application deadline, the employer must be current on any and all payments, premiums, administrative costs, assessments, fines or monies otherwise due to any fund administered by the workers' compensation division, including amounts due for retrospective rating, at the time of the application deadline date;

B. ~~The employer cannot be participating in a reinstatement agreement for payment of premiums or assessment obligations at the deadline for the application for group rating.~~ **Employers subject to a reinstatement agreement for payment of premiums or assessment obligations are eligible if an agreement has been reached with the division to resolve the issues relating to the reinstatement and if the employer is actively participating in such a reinstatement plan;**

C. The employer cannot have cumulative delinquencies in excess of fifty-nine days within the eighteen months preceding the application deadline date for group rating;

D. The employer must have a tax liability rating of A or B as defined by section fourteen of this rule; and

E. The employer must be in an active status on the first day of the coverage period for group rating. An employer who becomes active and obtains coverage after the first day of the coverage period may not participate in group rating for that year.

10.2.g. All members of the group must have entered into a written agreement among themselves, which includes at least the following:

A. A statement setting forth their reasons for purchasing insurance under a group retrospective rating plan;

B. A statement attesting that all members have the same classification code;

C. A formula determining how any additional premium taxes due the division or any premium taxes returned by the division as a result of the operation of the group retrospective rating plan will be allocated to each member of the group;

D. An undertaking by each member to pay to the division its allocated share of any additional premium taxes and to allocate responsibility if any member fails to pay its allocated share when due, so that the group will pay, in full, any additional premium taxes owed the division; and

E. An undertaking to establish and maintain a safety committee of its members to assist all members in reducing the incidence of losses and controlling the severity of losses of the group **including**

documentation of compliance with the safety and loss control plan at the time of renewal. All documentation will be reviewed by the division's safety director for approval.

10.3. Group status. Each employer who is a member of a group shall be jointly and severally liable for the workers' compensation obligations of other members of that group. No employer may apply for or be a member of more than one group for the purpose of obtaining workers' compensation coverage. ~~Applying for more than one group on a valid application for group rating will result in rejection of the employer from all groups for which the employer applied.~~

10.4. Representation for a group retrospective rating plan.

10.4.a. A group that has been established and has been accepted by the division for the purpose of a group retrospective rating plan shall have no more than one permanent authorized representative for representation of the group and the individual employers of the group before the division in any and all risk-related matters pertaining to participation in the workers' compensation fund.

10.4.b. The selection of an authorized representative must be made by submission of a completed form supplied by the division, and any change or termination of the authorized representative can be made only by a subsequent submission of the form. Only an officer of the group may sign such a form.

10.4.c. Notwithstanding the provisions of 10.4.a of this rule, an individual risk in a group may retain the services of an attorney and/or other authorized representative for claims-related matters before the division, ~~such as representation at claims hearings before the office of judges~~, through submission of the appropriate authorization for representation in such individual claim files. The division will recognize only one authorized representative for notice and appeal purposes.

10.4.d. For an individual employer which has left a group, the individual employer may retain an authorized representative for both claims and risk matters.

10.5. Application.

10.5.a. An application for a group retrospective rating plan shall be made in a form provided by the division and shall be completed in its entirety with all documentation attached as required by the division. The absence of pertinent information will result in the application being rejected. The application shall be signed by an officer of the organization to which the members of the group belong, and each individual employer in the group shall be identified in the application and shall individually sign a form provided by the division indicating a desire to be a part of the group for rating purposes and an acknowledgment of the criteria and rules for the group retrospective rating plan, as well as an acknowledgment by each employer of its joint and several liability for the workers' compensation obligations of other members of the group. The division may request of individual employers or the group additional information necessary including, but not limited to financial statements, safety and loss control inspection reports and claims reports, for the division to rule upon the application for group coverage. Failure or refusal of the group to provide the requested information on the forms or computer formats provided by the division shall be sufficient grounds for the division to reject the application and refuse the group's participation in the group retrospective rating plan. Individual employers who are not included on both the final group roster and the individual employer application by the application deadline will not be considered for the group plan for that coverage period. All rosters, computer formats or typewritten, must be submitted by the application deadline.

10.5.b. ~~Completed a~~ Applications for group coverage shall be filed one ~~two~~ full quarters prior to the beginning of the coverage period.

10.5.c. An application for group rating is applicable to only one coverage period. The group must reapply each period for group coverage. Continuation of a plan for subsequent periods is subject to timely filing of an application on a periodic basis and the meeting of eligibility requirements each period. Timely filing, in this instance, means filing ninety (90) days prior to the end of a coverage period. An individual employer member of a continuing group who initially satisfied the homogeneous requirement of this rule shall be disqualified from participation in the continuing group for failure to continue to satisfy such requirement.

10.5.d. Once a group has applied for a group retrospective rating plan, the organization may not voluntarily terminate the application during the division's evaluation period. All changes to the original application must be filed on a division form provided for the application for the group retrospective rating plan and must be filed prior to the filing deadline. Any rescissions made must be completed in writing, signed by an officer of the organization to which the members of the group belong, and filed prior to the filing deadline. The group may make no changes in the application after the last day for filing the application. Any changes received by the division after the filing deadline will not be honored. The latest application form or rescission received by the division prior to the filing deadline will be used in determining the premium obligation.

10.5.e. In reviewing the group's application, if the division determines that individual employers in the group do not meet the eligibility requirements for group rating, the division will notify the individual employers and the group of this fact, and, Employers found to be ineligible will be given 14 days to resolve all issues surround their ineligibility. If eligibility issues are unresolved, the group may continue in its application for group coverage without the disqualified employers, if the group still satisfies the minimum requirements for group rating as provided by this rule.

10.6. Calculation of group retrospective premium tax.

10.6.a. Standard premium shall be calculated for the members of the group. Standard premium for purposes of the group retrospective rating plan shall mean the aggregate premium tax of the group calculated according to the terms of the individual employers' applicable policies.

10.6.b. Adjustment of standard premiums on a loss sensitive basis. Standard premiums calculated in 10.6.a shall be adjusted on the basis of actual incurred losses and rating values.

10.6.c. The compensation programs performance council shall approve any rating schedule in accordance with the determinations provisions of section seven of this rule.

10.6.d. Retrospective premium calculation. The retrospective premium tax equals the sum of the premiums for the individual policies of the employers who are members of the group. Such premiums equal the sum of 10.6.d.E. and 10.6.d.F, below. Determine the following:

A. Incurred subject losses. In order to keep the expected total loss amount used in the premium computation within a predictable range, each loss used in computing the final adjusted premium is capped at an amount negotiated with the group's representative.

B. Incurred subject losses multiplied by the sum of those rating values shown on the schedule as applicable to incurred subject losses.

C. Standard premium multiplied by the sum of those rating values shown in the schedule as applicable to standard premium.

D. Other charges calculated according to rating values shown in the schedule or in other agreements between the individual group member and the division.

E.(a) The sum of 10.6.d.A, -B, -C and -D above, divided by the value in 10.6.d.E.(b) below.

(b) One minus the sum of the assessment factors shown in the schedule.

F. Premiums identified as "Non-Subject", after adjustment to reflect the increase or decrease in the basis thereof from the basis as estimated at the policy's inception. **Non-subject premium refers to exposures that are not subject to the experience or retrospective rating.**

10.6.e.A. Aggregate stop. If an aggregate stop amount is shown in the schedule, the division will not use more than such aggregate stop amount as the incurred subject losses in this formula for all policies to which this group rating plan applies, subject to 10.6.e.B.

B. If an aggregate stop limit is shown in the schedule, that is the maximum incurred subject loss the division will exclude from the formula for all policies which this group rating applies because of the application of 10.6.e.A.

10.7. Schedule of adjustments.

10.7.a. The division will calculate the first interim estimated premium eighteen (18) months after the plan's inception. The division will recalculate the interim estimate premium annually thereafter until all subject losses are settled or at an earlier time by agreement with the group when a final reconciliation and adjustment are computed.

10.7.b. Payment of additional premium to the division, or the return of premium to the group, resulting from the calculation or recalculation of the adjusted premium, shall be according to the agreement between the division and the group.

10.8. Cancellation.

10.8.a. If, without the division's written consent, any policy subject to the group rating plan is canceled, and if an aggregate stop amount calculated as a function of the standard premium is shown in the schedule, then the division will change the way the aggregate stop amount will be calculated, as follows:

A. The standard premiums used by the division as the basis of the aggregate stop amount will be the sum of the annualized standard premiums for all policies in effect at any time during the term (or the terms) to which this plan applies, according to the division's audit or the basis thereof.

10.8.b. If the division cancels any policy subject to group rating, the standard premium for the canceled policy will be the pro-rata share of the policy's annual standard premiums for the period of coverage, subject to adjustment on the basis of the division's audit or reasonable estimate of the actual premium basis during that period.

§85-9-11. Individual retrospective rating plan.

11.1. Description.

11.1.a. The plan may be used upon election by the employer and acceptance by the division.
~~Further, the division may assign an employer to this plan.~~

11.1.b. This plan adjusts the premium tax on the basis of losses incurred during the period of coverage. The intent is to charge a premium which reflects those losses. Within the principle of insurance, retrospective rating establishes the reasonable cost of workers' compensation coverage by using losses incurred during the coverage period and adding the division's expenses and other applicable charges.

11.1.c. This plan provides an incentive to the employer to control and reduce losses because the retrospective premium will be the result of losses during the coverage period. To the extent that the employer controls losses there is a reward through lower premiums.

11.1.d. The retrospective premium for a coverage period is based on the incurred losses during that period. Premium under the plan is the direct result of such incurred losses because the plan reflects the cost of losses, subject to limitation, plus the division's expenses and other applicable charges.

11.1.e. Retrospective rating is superimposed upon the standard premium.

11.1.f. Table of expense ratios. As part of its determinations under the provisions of section seven of this rule, the compensation programs performance council may develop expense ratio tables to indicate the total amount of the division's administrative expenses and other applicable charges. The total amount for such charges is determined by multiplying the standard premium of the risk by the factor for that size premium in the Table of Expense Ratios.

11.2. During the course of the coverage period in which an employer subscribes to the retrospective rating plan, the employer shall pay premium taxes in the same manner and in the same amount required under the provisions of the guaranteed cost plan (section eight) and the provisions of the receivables management section (section fourteen).

11.3. Election. An employer who meets the eligibility requirements of 11.4 may apply for coverage under a retrospective rating plan.

11.4. Eligibility. Coverage under a retrospective rating plan is available to an employer if the estimated ~~annual~~ standard premium is at least ~~\$25,000~~ **\$50,000**.

11.5. Application.

11.5.a. An employer may apply for coverage under a retrospective rating plan by filing with the division an application for the retrospective rating plan in the form prescribed by the division. The application must be completed in its entirety. The absence of pertinent information will result in the application being rejected.

11.5.b. The employer applying for coverage under the retrospective rating plan shall pay to the division an application fee of \$2,500.00 at the time the application is filed.

A. The employer's application and the required financial statements must be signed and sworn to by the president alone or the vice-president and secretary or assistant secretary of the employer, parent or related business if the employer, parent or related business is a corporation or limited corporation; or, by all of the partners if the employer, parent or related business is a partnership; or, by all of the general partners if the employer is a limited partnership; or, by all the members if the employer, parent or related business is a limited liability company; or, by the owner if the employer is neither a corporation, limited corporation, partnership, limited liability company, nor limited partnership.

11.5.c. An employer who applies for coverage under the retrospective rating plan shall apply for coverage under this plan at least 45 days prior to the beginning of the coverage period. If the application is approved by the division, the coverage under the retrospective rating plan will become effective on the first day of the coverage period.

A. When an application for coverage under a retrospective rating plan is filed, the division will review the application and inform the employer if there is a need for additional information. The employer must provide the division with the additional information in order to complete the application process. The division will render a decision approving or disapproving the application.

11.5.d. Employers applying for coverage under a retrospective rating plan must continue to make timely premium payments or other required payments for its workers' compensation risk until the retrospective rating plan is approved by the division and the status is effective.

11.5.e. The division shall review each application to evaluate the accuracy and completeness of information, correctness of classification information, payroll reports and deposits, and such other materials deemed necessary by the division. As part of the evaluation, the division may require payment and classification audits, as well as loss prevention inspections, to more accurately assess risk and charge appropriate premium taxes.

11.6. Calculations.

11.6.a. The retrospective premium formula. The premium for a risk subject to this plan is determined by the following retrospective premium formula:

Retrospective premium tax =

1. Basic premium (reflecting maximum and minimum premium)

Plus

2. Converted Losses

This formula produces a retrospective premium which shall be subject to the minimum retrospective premium and the maximum retrospective premium.

11.6.b. Definitions used in the formula.

A. "Basic premium" means a portion of the standard premium. It is determined by multiplying the standard premium by a basic premium factor. Such factors shall be based on the table of expense ratios and the table of insurance charges.

The "Expense" portion of the basic premium is that allocation of the standard premium intended to pay for the administration of the division, the retirement of any deficit, and such other charges not related to direct claims costs.

The "Insurance charge" reflects the net expected converted losses for which the retrospective premium formula will not generate additional premiums as a result of the application of minimum and maximum premium factors (See 11.6.b.D. and 11.6.b.E.) or per-claim loss limitations (See 11.7.a.).

B. Converted losses are based on the incurred losses of the employer during the period of the policy or policies to which this plan is applied. A loss conversion factor is applied to such losses to produce the converted losses.

C. The loss conversion factor covers claim adjustment expenses and the cost of the division's loss related services.

D. The minimum retrospective premium is a percentage of the standard premium. It is the least amount of premium to be paid by the employer subject to this plan. The minimum retrospective premium factor is established by agreement between the employer and the division. The basic factor varies in accordance with the minimum premium so established. The basic factor represents provisions for non-loss expense and the 'insurance charge' for specific and aggregate limits on an employer's claims liabilities entering the retrospective premium calculation.

E. The maximum retrospective premium is a percentage of the standard premium. It is the greatest amount of premium to be paid by the employer subject to this plan. It has the effect of placing a limit on the impact of incurred losses on the retrospective premium. The maximum retrospective premium factor is established by agreement between the employer and the division. The basic factor varies in accordance with the maximum premium so established.

11.7. Elective elements. The employer and the division may agree that either or both of the following additional elective premium elements will be included in the retrospective premium formula:

1. Per-claim loss limitation;
2. Retrospective development premium.

11.7.a. Per-claim loss limitation. Use of this elective element is intended to avoid the possibility that high individual losses will have too great an impact on the retrospective premium. Election of a loss limitation places a limit on the amount of incurred loss arising out of any one claim, which will be included in the retrospective premium formula. The basic factor will vary in accordance with the per-claim limit so elected.

11.7.b. Retrospective development premium. The purpose of this elective-premium element is to stabilize premium adjustments for employers subject to this plan. Retrospective development premium anticipates future increases in loss costs. The retrospective development premium is included only in the first three adjustments of the retrospective premium and is not included in any later premium computations.

A. Retrospective development premium is computed as shown below:

Standard Premium x Retrospective
Development Factor x Loss Conversion Factor

B. Retrospective development factors shall be determined by the compensation programs performance council in accordance with the provision of section seven of this rule.

11.7.c. Calculations of elective elements. The retrospective premium for an employer which has elected either or both of the additional elective premium elements is determined by the following formula:

Retrospective Premium Tax=

1. Basic Premium Tax (reflecting maximum and minimum premium, and per-claim loss limitation)

Plus

2. Converted Losses

Plus

3. Retrospective Development Premium

The retrospective premium shall not be less than the minimum retrospective premium nor more than the maximum retrospective premium.

11.8. Retrospective rating options. The parameters of each retrospective rating plan are subject to agreement between the employer and the division. These include the loss conversion factor, minimum premium factor, maximum premium factor, per-claim loss limitation, and retrospective development. The basic factor is determined in accordance with parameters so agreed upon.

In order to facilitate the use of retrospective rating, the division may issue (in tabular form) one or more "plans" based on the most commonly selected sets of parameters.

11.9. Cancellation.

11.9.a. Determination of premium upon cancellation.

A. Cancellation by the division, except for non-payment of premium.

B. Cancellation by the employer when retiring from business provided:

- (a) All work covered by the policy has been completed, or
- (b) All interest in any business covered by the policy has been sold, or

C. If the reason for the cancellation is A or B above, retrospective premium for the canceled policy shall be computed as follows:

(a) Standard Premium: Determine the premium for the canceled policy on a pro-rata basis. The resulting premium shall be the Standard Premium.

11.9.b. Retrospective Premium: The retrospective premium for the canceled policy shall be determined by using the retrospective premium formula in this plan. Use the standard premium to establish the basic premium and, if applicable, any retrospective development premium for the formula.

11.9.c. Exception for non-payment of premium: If the cancellation by the division is because of non-payment of premium by the insured, the maximum retrospective premium shall be based on a standard premium which shall be the premium for the canceled policy extended pro-rata to an annual basis.

11.9.d. Cancellation by the employer, except when retiring from business for the reasons stated above.

A. Determine the retrospective premium as follows:

(a) The premium for the canceled policy is to be calculated on a short rate basis.

(b) Use the retrospective premium formula in this section of the plan to establish the retrospective premium as shown below:

(A) Basic premium and if applicable, excess loss premium and retrospective development premium shall be computed by using the short rate premium above as the standard premium.

(B) Minimum retrospective premium shall be the short rate premium.

(C) Maximum retrospective premium shall be based on a standard premium which shall be calculated by using the actual payroll for the period the policy was in effect, extending that payroll pro-rata to an annual basis and then multiplying such extended payroll by the authorized rates and experience rating modification.

11.10. Computations.

11.10.a. First computation of retrospective premium. As soon as practicable after data has been prepared in accordance with this section (losses will be valued six months after the close of the coverage period), the first retrospective premium computation shall be made by the division. The division shall notify the employer and return premium if the retrospective premium is less than premium previously paid. The employer shall pay any premium greater than premium previously paid.

If the employer and division agree, the first computation of the retrospective premium shall be the final adjustment of premium under this plan. In the absence of such an agreement, additional retrospective premium computations shall be made by the division in accordance with 11.10.b.

11.10.b. Retrospective premium adjustment after first computation.

A. If the first or any other retrospective premium computation is not final, a subsequent computation and adjustment of premium subject to this plan shall be made by the division. Losses will be valued twelve (12) months after the date of valuation used in the previous computation. The procedure for such later computations shall be the same as 11.10.a, except that premium calculations shall be based upon the latest data available. If the employer and division agree, the latest computation shall be the final retrospective premium. Unless such an agreement has been made, the division shall continue to make such additional retrospective premium computations at intervals of 12 months.

B. If a subsequent computation of retrospective premium results in no change from the previous computation, the division shall notify the employer that there is no change in the premium payment and that subsequent computations of retrospective premium will be made in accordance with 11.10.c.

11.10.c. Final computation of retrospective premium.

A. Subsequent computations of retrospective premium shall be issued by the division in accordance with 11.10.b. above until both the division and employer agree that the latest computation shall be the final retrospective premium under this plan.

B. When the employer and division have agreed to the final retrospective premium calculation, a revision of that premium adjustment is not permitted except for clerical error.

§85-9-12. Adverse risk plan.

12.1. Description. The adverse risk plan identifies employers with substandard performance levels and imposes additional premium taxes on employers assigned to this plan. The purpose of the adverse risk plan is to encourage employers, by means of the imposition of a higher rate of premium tax, to adhere to the Act and the rules of the division and improve their performance. A further purpose is to provide an insurance plan for those employers with an elevated risk and whose inclusion with other employers results in an unacceptable sharing of risk by those other employers.

12.2. Identification. The division shall have the authority to identify and assign certain employers ~~including~~ excluding self-insured employers to the adverse risk plan. Such assignment shall only take place with the approval of the compensation programs performance council after review and evaluation of placement criteria to determine whether a specific employer has substandard performance levels.

12.3. Placement criteria. The division shall review and evaluate the following placement criteria in its determination of whether to recommend to the compensation programs performance council that an employer be included in the adverse risk plan:

(1) Whether the employer's actual losses exceed the employer's expected losses by a factor determined in accordance with the provisions of subsection 7.2.;

(2) Whether the employer has knowingly under-reported its payroll information or wage information required by the division;

(3) Whether the employer has refused to provide access to its premises and/or provide information requested by the division;

(4) Whether the employer is in default;

~~(5) Whether the employer has failed to maintain the proper level of premium tax deposit;~~

~~(6) Whether the employer is delinquent in filing and/or paying required premium taxes more than two times in any calendar year;~~

~~(7) When applicable, whether the employer has failed to post the amount of surety required by the division;~~

~~(8) Whether the employer has failed to make a proper payment or payments to a medical provider or the claimant, as required by the applicable provisions of the West Virginia Code or rules promulgated thereto;~~

(97) Whether the employer is not in compliance with this rule; ~~any other rules or programs of the division;~~

(108) Whether the employer has been cited for failure to comply with any applicable federal or state safety laws or regulations; **proven to be out of compliance with any federal or state safety laws and regulations directly affecting employee safety or health; and**

(119) Whether an individual or individuals, who exercise ownership and control over an employer assigned or previously assigned to the adverse risk plan, exercise ownership or control over a new or existing employer;

(12) ~~Such other factors or criteria considered necessary by the division to adequately assess risk or insure fairness and equity of the ratemaking system.~~

12.4. The division shall consider additional factors in its determination of whether the employer meets the placement criteria of 12.3.(1). Such factors shall include:

12.4.a. Whether the employer has been properly classified for purposes of determining the employer's expected losses;

12.4.b. Whether the employer is engaged in a unique employment category such that there is no suitable classification for purposes of determining the employer's experience modification factor;

12.4.c. Whether the employer experienced an anomalous circumstance so as to adversely affect the employer's actual losses; and

12.4.d. Whether the employer is participating in a program developed under the provisions of W. Va. Code §23-2B-1 et seq.

12.5. Evaluation of criteria. The compensation programs performance council shall consider the criteria of subsection 12.3 **and 12.4**, taken as a whole, in its determination of whether to assign an employer to the adverse risk plan.

12.6. Effect of assignment to the adverse risk plan. Placement in the adverse risk plan shall result in an increase in the amount of premium tax paid by the employer so assigned. The amount of increase of premium tax shall be determined in accordance with a schedule of adverse risk charges developed by the compensation programs performance council under the provisions of subsection 7.2. The increase in premium taxes shall include all payment periods during which the employer is assigned to the adverse risk plan. The amount of increase in premium tax shall be over and above any other assessment of charges under the provisions of the Act.

12.7. Length of assignment. When an employer has been placed in the adverse risk plan, such assignment shall be for a period, to be determined by the division considering the number and severity of violations, not to exceed one year. **Each employer assigned to the adverse risk plan shall develop a remediation plan, acceptable to the division, which addresses the correction of the placement criteria under subsection 12.3 for which the employer was deficient. The remediation plan from the employer shall be due within thirty (30) days following the date of assignment to the adverse risk plan.** Such period may be extended for an appropriate period by the division if the employer does not correct its actions or falls within any placement criteria developed under subsection 12.3.

12.8. Notification.

12.8.a. Prior to recommending to the compensation programs performance council that an employer be included in the adverse risk plan, the division shall:

- A. Notify the employer regarding the forthcoming recommendation;
- B. Provide to the employer the reasons for recommending assignment to the adverse risk plan;
- C. Provide to the employer thirty (30) days for written response to the division's reasons for recommending assignment to the adverse risk plan;
- D. Provide a copy of any such employer response to the compensation programs performance council when the division recommends including an employer in the adverse risk plan.

12.8.b. After the compensation programs performance council has determined that an employer be assigned to the adverse risk plan, the division shall:

- A. By its order, notify of the reasons for assignment to the adverse risk plan, the length of the initial assignment to the plan, the additional percentage of premium tax or such other sums due, and the due date of such payment.

~~12.8. Notification. Each employer assigned to the adverse risk plan shall be notified by the division at least thirty (30) days prior to assignment. Such notification shall include the reasons for assignment to the plan, the length of initial assignment to the plan, the additional percentage of premium tax or such other sums due, and the due date of such payment.~~

§85-9-13. Self insurance.

13.1. Self insurance status. An employer may become self-insured with respect to the compensation fund and the catastrophe reserve of the surplus fund or to the compensation fund but not the catastrophe reserve of the surplus fund, if the division, with the approval of the compensation programs performance council, determines it meets the financial responsibility requirements and procedural requirements set forth in W. Va. Code, §23-2-9, and in this rule.

An employer owned by or related to another business may have its compensation risks self-insured by the parent or related business in lieu of the employer itself being self-insured, if the relationship between the employer and parent or related business is adequately documented, as determined by the division, and if the parent or related business can satisfy the requirements of the Act and this rule for both itself and for the subject employer.

Any employer granted the privilege of self-insurance, as to all or part of the compensation fund, shall give security or bond in the form, of the type, and in the amount required by the division, with the approval of the compensation programs performance council, pursuant to the Act and this rule. Additionally, any employer granted the privilege of self-insurance, as to all or part of the compensation fund, shall abide by the requirements for maintaining, modifying, or terminating the self-insured status, as set forth in the Act and this rule.

13.2. Application.

13.2.a An employer may apply for self-insurance by filing with the division an application for self-insurance in the form prescribed by the division. If a parent or related business is to insure the employer's compensation risk, the relationship between the employer and the parent or related business must be documented on the application.

13.2.b. A disclosure of the employer's management and financial structures, notice of the type of surety the employer intends to obtain to secure the self-insurance risk, and the employer's audited financial statements for each of the three (3) fiscal years preceding the date of application must be attached to the application. If a parent or related business is to insure the employer's compensation risk, the parent's or related business' disclosure of management and financial structures, and its audited financial statements for the three years preceding the date of application must also be attached to the application.

A. The employer's application and the required audited financial statements must be signed and sworn to by the president alone or vice-president and secretary or assistant secretary of the employer, parent or other related business if the employer, parent, or related business is a corporation or limited corporation; or, by all of the partners if the employer, parent or related business is a partnership; or, by all of the general partners if the employer, parent or related business is a limited partnership; or, by all the members if the employer, parent, or related business is a limited liability company; or, by the owner if the employer, parent or related business is neither a corporation, limited corporation, partnership, limited liability company, nor limited partnership.

B. If the employer is a government agency, the criteria used to determine financial stability, guaranties, and security may be modified to accommodate for governmental accounting and other issues related to a going concern. Any modifications allowed by the compensation programs performance council in these cases will take into consideration the risk to the division.

13.2.c. The employer may provide the division with any additional information deemed relevant to its financial stability. After reviewing the application and audited financial statements, the division may request additional information from the employer, parent, or related business relevant to the employer, parent, or related business's financial stability, and the applicant must provide the requested information.

13.2.d. The employer applying for self-insurance shall pay to the division a non-refundable application processing fee at the time each application is filed.

The application fee is \$2,500.00, but may be modified by the division.

13.2.e. An employer who is a subscriber to all or part of the West Virginia Workers' Compensation Fund may apply at anytime to self-insure all or part of its workers' compensation risk, as set forth in subsection 13.4 of this rule. If the application and the security are approved by the compensation programs performance council, the self-insurance will be effective on the first day of the quarter, following the month in which the application was approved, but only if the security is effective on that date.

An employer new to the state of West Virginia, who has never subscribed to the compensation fund, may apply for self-insurance at the time it registers with the division. Until self-insurance approval is granted, the new employer shall be considered to be in the guaranteed cost plan.

A. When an application for self-insurance is filed, the division will review the application and inform the employer if there is a need for additional information, pursuant to paragraph 13.2.c of this rule. The employer must provide the division with the additional information in order to complete the application process. The division will complete an evaluation of the information and the employer's surety choice. The division will have a preliminary audit of the employer's account performed and issue to the employer a notice of the required remittance, which shall be paid prior to further processing of the application. The division will have the "buy-out" amounts, defined under subsection 13.3. of this rule, calculated and advise the employer of their options. Finally, the division, with the approval of the compensation programs performance council, will render a decision approving or

disapproving the application and defining the security requirements. The employer will then have sixty (60) days from the date of notification to obtain adequate security, as defined by the division with the approval of the compensation programs performance council, under subsection 13.6 of this rule. Self insurance status shall not be granted until adequate security is effective.

B. If the employer is unable to obtain adequate security, as defined by the division with the approval of the compensation programs performance council, within the sixty (60) day period, the employer may file a written request with the division for an extension of the deadline, but the request must be filed prior to the expiration of the original deadline. The division may grant a sixty (60) day extension if the employer has established good cause for the extension. If an extension is granted, the employer must obtain adequate security, as defined by the division with the approval of the compensation programs performance council, under subsection 13.6 of this rule, within the extension period, to be effective on the first day of the quarter after approval.

13.2.f. Employers applying for self-insurance must continue to make timely premium payments or other required payments for its workers' compensation risk until self-insurance status is approved by the compensation programs performance council and the status is effective.

13.3. Reconciliation and settlement of applicant's account.

13.3.a. The compensation programs performance council shall not grant self-insured status under the Act to any employer whose record upon the books of the division shows a liability against the compensation fund, incurred on account of injury to or death of any of its employees, in excess of premium taxes paid by such employer to the compensation fund, until it has paid into the compensation fund the amount of such excess liability, including excess liability incurred on account of explosions, catastrophes or second injuries occurring within the state and charged against the surplus fund. The employer must pay to the compensation fund the entire amount of the excess liability prior to the effective date of self-insurance, unless the division and the employer enter into a repayment agreement.

The division has the authority to determine whether entering into a particular repayment agreement will meet the division's fiduciary responsibility to the compensation fund and shall consider the employer's financial stability, as reflected by its financial statements and other information of record, in making the determination and in agreeing to specific terms of repayment. The repayment term shall not exceed three years. Additionally, the agreement shall provide for the payment of interest on the principal which shall be calculated on the effective date of the agreement, pursuant to W. Va. Code §23-2-13. The interest rate shall remain the same for the life of the agreement.

13.3.b. An employer is responsible for the future costs of awards and medical benefits granted after the effective date of self-insurance to its employees for injuries or deaths that occurred in any period during which it subscribed to the compensation fund. At the time of an employer's application for self-insured status, the division will determine the amount of money that is sufficient to cover the applicant's liability for the future costs of the awards and medical expenses not previously used in calculating premium.

An employer's self-insured status will not be effective until the employer posts security or bond in an amount sufficient to cover the future liability, or pays the actual amount. The division must approve the employer's election.

A. The division must approve of the form, type, and amount of the security or bond before the employer will be permitted to post security or bond to cover the cost of future liability.

(a) If the security or bond is approved by the division, the division will transfer all of the employer's open and closed claims from the employer's existing account to the self-insured account. The employer shall agree to reimburse the compensation fund for any payments made in these claims on behalf of the employer after the effective date of self-insurance except where an award was granted prior to the effective date of self-insurance.

(b) If a self-insured employer's employee is granted a permanent total disability award pursuant to W. Va. Code §23-3-1, and the "second injury" was incurred by the employee during a period of time in which the employer was a subscriber to the compensation fund or the Second Injury Reserve of the surplus fund, then only the cost of the permanent partial disability award associated with the "second injury" will be charged to the self-insured account and all other costs associated with that permanent partial disability award which are incurred after the date of the second injury life award will be charged to the compensation fund.

B. If the employer elects or is required by the division to pay the amount estimated to cover the cost of future liability, this amount shall be paid prior to the effective date of self-insurance. The employer must pay to the division the entire amount of the excess liability prior to the effective date of self-insurance, unless the division and the employer enter into a repayment agreement.

The division has the authority to determine whether entering into a particular repayment agreement will meet the fiduciary responsibility to the compensation fund and shall consider the employer's financial stability, as reflected by its financial statements and other information of record, in making the determination and in agreeing to specific terms of repayment. The repayment term shall not exceed three years. Additionally, the agreement shall provide for the payment of interest on the principal which shall be calculated on the effective date of the agreement, pursuant to W. Va. Code §23-2-13. The interest rate shall remain the same for the life of the agreement.

13.3.c. If an employer-applicant can establish that as of the effective date of self-insurance, its record upon the books of the division shows that the premium taxes it paid to the compensation fund exceed the liabilities incurred by the compensation fund on account of injury to or death of any of its employees, then the division and the compensation programs performance council shall consider the amount of excess premium taxes in assessing the employer's demonstrated loss experience for the purpose of determining whether security in excess of the one million dollar minimum shall be required, pursuant to subsection 13.6. of this rule. This paragraph does not entitle the employer to an actual monetary credit or refund. The amount of security required to be pledged in lieu of a buy-out of the employer's prior claims liabilities shall not be reduced by the amount of any excess premiums.

13.4. Elections by employers applying for self-insurance.

13.4.a. The employer applying to self-insure its workers' compensation risk must at the time of application elect in writing to subscribe to the catastrophe reserve of the surplus fund or to self-insure the catastrophe risk pursuant to W. Va. Code §23-2-9(d), and elect in writing to make direct payment of health care provider and medical invoices or to have the division make payment of the invoices.

A. If a self-insured employer elects to subscribe to the catastrophe reserve of the surplus fund, it shall pay premium taxes into the surplus fund on the same basis and in the same percentages as subscribers to the general fund pay for coverage under the catastrophe reserve of the surplus fund. The employer shall pay the premium tax in accordance with the provisions of section fourteen of this rule.

B. If a self-insured employer elects to self-insure the catastrophe risk, then it must furnish a catastrophe security or bond, approved in an amount determined by the division, with the approval of the compensation programs performance council, in addition to the security or bond furnished as a general self-insurance requirement. The catastrophe security or bond shall be in an amount the division considers adequate and sufficient to

compel or secure payment of all compensation and expenses to the employer's employees and the employees' dependents for catastrophe-related injuries or deaths.

C. The employer must satisfy the following requirements in order to make direct payment of health care provider and medical invoices:

(a) The employer must designate in writing to the division a person responsible for payment of the bills and must provide the division with the address and telephone number of the responsible person.

(b) The employer must retain a claimant file, a copy of each invoice, and a record of any action taken with respect to the invoice. Such records may be retained in an electronic format as approved by the division. This information must be accessible to the division during normal working hours. If the employer stops doing business in West Virginia, or elects or is required to cease making direct payment of health care provider and medical invoices, then the employer must deliver this information to the division.

(c) The health care provider must use the invoices prescribed by the division in billing the employer. The employer must pay all invoices within thirty (30) days of receipt.

(d) The employer may request the division's assistance in resolving an invoice dispute. The request must be made in writing and include a complete medical and medical invoice history of the relevant claim.

(e) The employer shall forward medical invoices in claims with allocated employer charges to the division for processing. The division will then issue a payorder and/or check, as is appropriate.

(f) The employer shall forward medical invoices related to Occupational Pneumoconiosis Board evaluations to the division for processing. The division will then issue a payorder and/or check, as is appropriate.

(g) Employers must collect all overpayments and duplicate payments directly from the health care provider. When the employer collects such overpayments and duplicate payments from a health care provider, then the employer shall notify the division of such collections in the manner prescribed by the division.

(h) The employer must provide all medical invoices that it believes are to be paid from one of the division's internal accounts to the division for processing. The employer must file a written explanation of the charge with the invoice.

(i) At the end of each calendar year, the employer must provide an IRS Form 1099 to health care providers to whom payment was made during the calendar year.

(j) Prior to July 31 of each year, the employer must provide the division with an annual report of total medical payments made during the previous fiscal year. The report must be in a format acceptable to the division.

D. If the employer fails to meet any statutory or regulatory requirements pertaining to the payment of health care provider or medical invoices, the division may revoke the privilege of making direct payments. The division will issue to the employer an intent to revoke and the employer is afforded an opportunity

for hearing before the privilege is revoked. The employer will have thirty (30) days after receiving the revocation notice to request a hearing and/or provide the division with evidence of a just cause for failure to meet the requirements.

If the employer is issued a revocation notice more than two times, even if the infractions have been corrected and just-cause shown, the division ~~will~~ may review the employer's entire record and make a determination as to whether the employer shall be allowed to continue the privilege of making direct payments, ~~or be reassigned under the provisions of subsection 6.14 of this rule.~~

13.4.b. The employer may request a change in its election as to the catastrophe reserve or direct payment of medical and health care provider invoices. The request must be in writing and filed with the division on or by June 1 of any given year, to be effective on July 1 of that year.

The division will issue a decision approving or disapproving the change in election. If the change in status is approved, the new status will be effective on the first day of the first quarter following the request for a change in status.

13.5. Division's review of the application for self-insurance

13.5.a. In reviewing an employer's application for self-insurance, the division must assess the employer's ability to demonstrate that its financial strength is sufficient to meet its obligations under the Act.

13.5.b. In assessing the employer's application, the division shall review and evaluate the audited financial statements filed with the application, the employer's workers' compensation loss experience, and other information.

13.5.c. If an employer relies on the audited financial statements of its parent to be granted self-insured status, then the parent company shall provide a parental guaranty in a form acceptable to the division.

13.6. Security and bond.

13.6.a. The minimum amount of security or bond required to become a self-insurer for all or part of the compensation fund is one million dollars (\$1,000,000). The one million dollar (\$1,000,000) minimum is in addition to any security that may be required as a result of the employer not buying out their prior claims liability or any security that may be required due to the employer self insuring their catastrophe risk. The division, with the approval of the compensation programs performance council, may direct that this amount be increased or decreased in the future.

13.6.b. The employer-applicant shall post security or bond in an amount sufficient to meet all of its obligations to its employees and their dependents, as defined by the Act and this rule, during the first year of self-insurance and for the reasonably foreseeable period thereafter. At anytime that good cause exists to believe that the bond or security is no longer sufficient to meet the employer's reasonably foreseeable obligations, the division, with the approval of the compensation programs performance council, shall require the employer to post additional or supplemental security or bond to meet these obligations. (See subsection 13.8 of this rule, Maintaining self-insured status).

13.6.c. There are several acceptable types of security and bond including, but not limited to, occurrence type security or bond, marketable securities, and letters of credit. The division has the discretion to find that a particular type of security or bond is acceptable.

A. If the self-insured employer obtains an occurrence-type security or bond, then the security or bond is liable in the place of the employer should the employer be unable to meet its obligations for any or all injuries or deaths that may occur during the time period for which the security or bond is effective, and the security or bond remains liable at the time any awards for the injuries or deaths are subsequently made and for the entire time period in which benefits will be paid under the awards, including death benefits to surviving dependents.

Nothing to the contrary contained in any writing associated with or included as a part of the security or bond shall defeat this obligation. Every surety, guarantor, warrantor, or other person or entity who purports to stand in the place of the self-insured employer for the payment of benefits shall be considered to have given the security or bond in compliance with this subsection, and no statement or disclaimer in the security or bond shall negate this requirement.

B. If the self-insured employer wishes to post marketable securities to meet its obligation for security or bond, the securities must satisfy the following requirements:

1. The securities must be fixed term debt instruments with a fixed and determinable principal amount;
2. The issuer of the securities must be a governmental entity or governmental agency or corporation of this state, or any other state, or the United States;
3. The maturity date of the instrument cannot be more than ten years from the date the securities are posted with the division; and,
4. The payment of both principal and interest are denominated and payable in United States dollars with the interest payable at fixed periodic payment dates and at a fixed rate of the principal amount of the indebtedness.

C. If the self-insured employer wishes to post a letter of credit to meet its obligation for security or bond, the letter of credit must satisfy the following requirements:

1. The letter of credit must be issued by a bank operating in the United States;
2. The letter of credit must utilize language approved by the division and in accordance with this rule; and
3. Before it will be considered security for self-insured risks, the letter of credit must contain an "evergreen" clause as specified by the division, which holds the issuer responsible for the employer-applicant's liability resulting from all injuries incurred by or deaths of the employer's employees prior to the expiration of the letter of credit. In the event that the employer-applicant is unable to obtain an evergreen clause, then the employer-applicant must obtain permission from the division to use a letter of credit with a nonrenewal draw clause.

13.6.d. Employers applying for self-insurance must meet the security requirements defined by the division, ~~as approved by the compensation programs performance council. The amount of security or bond required from a self-insured employer shall be that amount determined by the division or its actuary in an amount~~ to be adequate and sufficient to compel or secure payment of compensation and expenses to the employer's employees, or their dependents, as required by the Act, and shall not be less than one million dollars (\$1,000,000). The amount of security required of a self-insured employer shall be based upon, but not be limited to, such criteria as the employer's financial strength including excess liability insurance and the employer's demonstrated loss experience. A

demonstrated loss experience includes general workers' compensation loss experience, second injury reserve loss experience and catastrophe reserve loss experience.

The division shall utilize a financial ratio summarization, based upon a comparison of the employer-applicant's solvency, efficiency and profitability ratios to a specific industry's ratios, as defined, for example, in the current Dunn & Bradstreet Industry Norms and Key Business Ratios, in evaluating an employer's financial strength and in making a ~~determination~~ recommendation to the compensation programs performance council as to an appropriate amount of security, not to be less than one million dollars (\$1,000,000). Whenever possible, the division shall make a comparison of ratios utilizing the employer's workers' compensation industry classification.

13.6.e. Upon notice from the division, each self-insured employer shall file an application annually to continue the self-insurance privilege, as set forth in subsection 13.8 of this rule. At the time the application for continuation of the privilege is filed, or sooner as an individual case may require, the division shall review the self-insured employer's current financial status and security requirements. The division will notify the employer of the results of an annual review, if a review is performed.

If the division determines that the security requires adjustment in light of the employer's current financial status, the division ~~may~~ shall recommend to the compensation programs performance council adjust that the security requirements ~~be adjusted~~. Prior to such action, the division shall notify the employer of the forthcoming recommendation to the compensation programs performance council and the reasons for the recommendation. The employer shall be provided thirty (30) days for written response to the division. The division shall provide a copy of any such employer response to the compensation programs performance council if the division recommends that the employer's security be adjusted.

A. If the division determines that a self-insured employer's securities or bonds are inadequate or insufficient, the division, with the approval of the compensation programs performance council, shall enter an order directing the employer to increase its securities or bonds by the amount needed to reach the adequate and sufficient level for all time periods originally intended to be covered by the inadequate or insufficient security or bond. An inadequate or failed security or bond includes, but is not limited to instances where the entity behind the security or bond is no longer a viable entity or, for whatever reason, can no longer meet its obligations.

The division shall provide a reasonable amount of time for the employer to obtain the increased or added security or bond or develop a work out agreement and obtain the first installment payment; however, the period to secure additional security or period to develop a work out agreement and obtain the first installment payment shall not exceed ninety (90) days from the date of the division's order. The increased security or bond must meet the requirements set forth in paragraph 13.6.b of this rule.

B. A self-insured employer's failure to obtain additional bond or security, as required by the division's order, may result in a revocation of the privilege of self-insurance and termination of the employer's self-insured status, ~~the reassignment of the employer to another workers' compensation insurance plan~~, and/or the imposition of a graduated premium tax pursuant to 13.8.d. The division shall issue a notice specifying the effective date of any such action or actions.

C. If the division has not already determined that a decreased adjustment is merited, the self-insured employer may file a written petition with the division for a downward adjustment of its security requirements for purposes of future injuries or deaths incurred by its employees. The security cannot be adjusted to an amount less than one million dollars (\$1,000,000.). The petition must include the employer's audited financial statements for the three years preceding the date of the petition. The division may request additional information from the employer, as it considers necessary. The division shall render a written ~~decision~~ recommendation to the

compensation programs performance council on the petition within ninety (90) days of receipt of the petition, and if ~~the petition is granted by the compensation programs performance council~~, the division shall set forth the terms for the new security requirements in the written decision.

13.6.f. After the effective date of this rule, this section of the rule is applicable to all security or bond given by an employer to meet any security requirement under the Act or this rule. All securities and bonds given prior to the effective date of this rule shall be construed to be in keeping with the law in effect prior to the effective date of this rule.

13.6.g. In accordance with the provisions of subsection 7.2, the division, with the approval of the compensation programs performance council, ~~may~~ shall develop a sliding scale based upon the employer's financial circumstances, to determine the amount of security required to become a self-insured.

13.7. Second injury reserve of the surplus fund.

13.7.a. All self-insured employers must subscribe to the second injury reserve of the surplus fund, with the exception of the self-insured employers who elected prior to the second day of February, one thousand nine hundred ninety-five, not to subscribe to the second injury reserve and who have continued not to subscribe to the reserve from that date, without interruption, and with the exception of the self-insured employers who elected prior to the second day of February, one thousand nine hundred ninety-five, to subscribe to the second injury reserve of the surplus fund, but elected not to subscribe to the reserve for the calendar year of one thousand nine hundred ninety-five and who have continued such election from that date, without interruption.

13.7.b. To determine the self-insured employer's second injury reserve premium or contribution, the division shall establish industrial groups or classes to reflect common risks related to the payment of second injury life awards from the second injury reserve of the surplus fund and the division may modify the groups or classes from time to time, as necessary to meet the fiduciary needs of the second injury reserve of the surplus fund, pursuant to W. Va. Code §23-2-9. Additionally, by the first day of July in any given year, the division shall actuarially establish the projected funding cost for losses to be incurred by the second injury reserve of the surplus fund during the prospective year for each industrial group or class.

A. The division shall assign base premium tax rates to each industrial class to reflect the second injury life award experience rating of the class. The division may modify the assigned rate yearly on the first day of July, or at any time the modification may be necessary, provided that a schedule of the readjusted rates are filed with the office of the Secretary of State for publication in the State Register, pursuant to W. Va. Code §29A-2-1 et seq., at least thirty days prior to the first day of the quarter to which the adjustment of rates is applicable.

B. The individual self-insured employer's base rate shall be modified by the division to reflect the ratio of the individual employer's record of second injury life awards to the average cost of second injury life awards for all employers in the particular industrial group or class. To calculate the ratio, the division shall utilize a period not to exceed three years preceding the year in which the rate is to be effective.

C. The division shall notify every self-insured employer subscribing to the second injury reserve of the surplus fund of any rate modification and the effective date of the modification. The division shall furnish each self-insured employer subscribing to the second injury reserve of the surplus fund, yearly or more often if requested by the employer, a statement giving the name of each of the employer's employees who were granted a second injury life award or related benefits during the period covered by the statement.

13.7.c. The division, with the approval of the compensation programs performance council, may require any employer who is permitted to self-insure the second injury life award risk pursuant to W. Va. Code §23-

2-9, to furnish an additional security as defined by subsection 13.6 of this rule. The second injury security or bond must be in an amount determined approved by the division, with the approval of the compensation programs performance council, and must satisfy the requirements set forth in subsection 13.6 of this rule. Provided, pursuant to W. Va. Code §23-2-9(e), any self insured employer who was, prior to the second day of February, one thousand nine hundred ninety-five, permitted to self insure its second injury risk, may elect to continue to self-insure its second injury risk for so long as it meets the requirements of Chapter twenty-three of the West Virginia Code, including the security and bond requirements of W. Va. Code, §23-2-9(a), and subsection 13.6 of this rule.

13.8. Maintaining self-insured status.

13.8.a. Upon notice of the division, each self-insurer shall file annually an application to continue the self-insurance privilege. The renewal application shall be in the form prescribed by the division and shall be accompanied by a current audited financial statement, ~~and a renewal processing fee of five hundred dollars (\$500).~~

The employer's status as a self-insured employer with respect to all or part of the compensation fund shall continue on a year-to-year basis so long as the employer continues to maintain the requisite financial standing, as set forth in subsection 13.5 of this rule, and continues to satisfy the other requirements imposed by the Act, this rule and any other pertinent rule, and any order of the division. If necessary in order to ascertain whether the employer has met and can continue to meet all of the self-insurance requirements and obligations, the division may conduct an audit of all accounting records, books, records, papers, operations and documents deemed relevant by the division in the possession or control of the employer.

13.8.b. A self-insured employer with respect to all or part of the compensation fund is responsible for the direct payment of all pecuniary compensation due and owing under the Act to employees or employees' dependents; is responsible for the direct payment of health care provider and medical invoices pursuant to subsection 13.4 of this rule, if the employer elected to make such direct payment; and is responsible for reimbursing the division for all medical, funeral, or other expenses paid by the division on behalf of its employees and their dependents.

The employer shall pay pecuniary compensation payable by the employer and reimbursements due from the employer within the time periods specified by the Act, the various rules promulgated by the ~~commissioner~~ compensation programs performance council, and the orders of the division; or, in the absence of any of the above, employer shall pay the compensation and reimbursements in a prompt and timely fashion. Further, the division's payorders for temporary total disability benefits must be paid within ten (10) days of receipt, payorders for permanent partial disability benefits must be paid within fifteen (15) days of receipt, and payorders for medical bills must be paid within thirty (30) days of receipt. The employer's experience in meeting these obligations shall be considered by the ~~division~~ compensation programs performance council in determining whether to permit the employer to remain a self-insurer.

13.8.c. The ~~division~~ compensation programs performance council may direct the division to suspend or terminate an employer's self-insurance status ~~or assign the employer to another plan~~ if the employer fails at any time to comply with the requirements of the Act, this rule or any other pertinent rule, or any order of the division; or, otherwise defaults on a self-insurance obligation. The division shall provide the employer with written notice of the suspension, or termination ~~or assignment~~.

13.8.d. Notwithstanding section 13.6.b of this rule, in cases where the employer is permitted to remain self-insured, even though their security is less than the amount required, as determined by the division, with the approval of the compensation programs performance council, the compensation programs performance council may approve a graduated premium tax to insure against the additional risk, ~~as a determination under the provisions of 7.2 and 7.3.~~ This increased premium tax applies to any self-insured employer who fails to maintain adequate security.

13.9. Self-insured employer's modification of business.

13.9.a. In the event a self-insured employer reorganizes its business, assumes additional liability, acquires new assets or operations, buys an additional business, merges with another business, or otherwise changes its operation in any manner which impacts on its workers' compensation liability, the self-insured employer must notify the division of the modification of business, immediately. The notice of modification must include specific information as to the nature of the modification, including but not limited to a copy of the executed contract causing the modification, and the names of other employers and/or businesses affected by the modification.

13.9.b. If the self-insured employer has acquired a new operation or business or has merged with another business, then it must file an application for self-insurance on behalf of its new or additional business and must request that the new or additional business be merged into its existing self-insured account. The application to self-insure the new operation or business shall be processed in accordance with the Act and the division's rules governing self-insurance.

13.9.c. Under paragraphs 13.9.a and 13.9.b, of this rule, the division will review the employer's security and bond requirements and make an appropriate recommendation to the compensation programs performance council for an adjustment to the security requirements, as set forth in subsection 13.6 of this rule.

13.9.d. Depending on the nature of the modification of business, the division may require the self-insured employer to pay the application processing fee of \$2,500.

13.9.e. If the modification causes a self-insured employer to no longer qualify for the privilege of self-insured status, the division, with the approval of the compensation programs performance council, shall have the authority to suspend, or terminate or assign in accordance with the provisions of 13.8.c.. Settlement of estimated liability at the time of revocation shall be determined in accordance with the provisions of section thirteen of this rule.

13.10. Voluntary termination of self-insured status.

13.10.a. If a self-insured employer decides to continue doing business in the state of West Virginia, but terminate its self-insured status, the employer remains liable for all accrued and contingent liabilities transferred to the self-insured account on the effective date of self-insurance, and remains liable for all accrued and contingent liabilities resulting from injuries or diseases incurred by its employees during the period of self-insurance and prior to termination of the self-insured status, unless the employer pays into the compensation fund an amount sufficient to cover the estimated cost of all such liability, in which case the future costs of the liability shall be paid from the compensation fund. The employer shall provide written notice to the division thirty (30) days prior to the termination of its status.

A. When the employer decides to terminate its self-insured status, the division shall estimate the amount of money that is sufficient to cover the future costs of the liability.

B. The division shall not permit the employer to terminate the self-insured status and subscribe to another plan until it pays the actual estimate, or maintains security or bond in an amount sufficient to cover the estimated future cost of the liability. The division must approve the employer's election for the payment of the estimated future cost of liability.

(a) If the employer elects or is required by the division to pay the actual amount estimated to cover the cost of future liability, the employer must pay this amount prior to the termination of self-insurance unless the employer and the division enter into a repayment agreement. The division has the authority

to determine whether entering into a particular repayment agreement will meet its fiduciary responsibility to the compensation fund and shall consider the employer's financial stability, as reflected by its financial statements and other information of record, in making the determination and in agreeing to specific terms of repayment. The repayment term shall not exceed three (3) years.

Additionally, the agreement shall provide for the payment of interest on the principal which shall be calculated on the effective date of the agreement, pursuant to W. Va. Code §23-2-13. The interest rate shall remain the same for the life of the agreement.

(b) If the employer elects to cover the future costs of the liability with a security or bond, it must obtain the division's approval of the election and the division's approval of the form, type, and amount of the security or bond.

13.10.b. A self-insured employer must provide the division with written notice thirty (30) days prior to termination if it ceases doing business in the state of West Virginia and intends to terminate its self-insurance status. If a self-insured employer so terminates its business, the employer remains liable for all accrued and contingent liabilities transferred to the self-insured account on the effective date of self-insurance, and remains liable for all accrued and contingent liabilities resulting from injuries or diseases incurred by its employees during the period of self-insurance and prior to termination of the self-insured status, unless the employer pays into the compensation fund an amount sufficient to cover the estimated cost of the liability, in which case the future costs of the liability shall be paid from the compensation fund. When the employer decides to terminate its self-insured status, the division shall estimate the amount of money that is sufficient to cover the future costs of the liability. If the division incurs costs beyond those normally required for a buyout calculation, the employer must pay a fee equal to the greater of \$5,000.00 or the costs actually incurred.

Upon terminating self-insurance, the employer may elect to continue making payment of benefits, pay the full amount of the future liability, or enter into a repayment agreement with the division for the amount of the future liability. If the employer retains full liability or enters into a repayment agreement, the employer must maintain the security for self-insurance, as defined by this rule.

A. If the employer elects or is required by the division to pay the actual amount estimated to cover the cost of future liability, the employer must pay this amount prior to the termination unless the employer and the division enter into a repayment agreement. The division has the authority to determine whether entering into a particular repayment agreement will meet its fiduciary responsibility to the compensation fund and shall consider the employer's financial stability, as reflected by its financial statements and other information of record, in making the determination and in agreeing to specific terms of repayment. The repayment term shall not exceed three years.

Additionally, the agreement shall provide for the payment of interest on the principal which the division shall calculate on the effective date of the agreement, pursuant to W. Va. Code §23-2-13. The interest rate remains the same for the life of the agreement.

13.10.c. If a self-insured employer terminates its self-insured status because it ceases doing business in the state of West Virginia as the result of a sale or transfer of all or part of its business, the self-insured employer must notify the division of the sale or transfer thirty (30) days prior to the date of closing. The self-insured employer so terminating its self-insured status remains liable for all accrued and contingent liabilities transferred to the self-insured account on the effective date of self-insurance, and remains liable for all accrued and contingent liabilities resulting from injuries or diseases incurred by its employees during the period of self-insurance and prior to termination of the self-insured status unless the employer pays into the compensation fund an amount sufficient to cover the estimated cost of the liability, in which case the future costs of the liability will be paid from the

compensation fund. When the employer decides to terminate its self-insured status, the employer shall request the division to estimate the amount of money that is sufficient to cover the future costs of the liability defined in this section. If the division incurs costs beyond those normally required for a buyout calculation, the employer must pay a fee equal to the greater of \$5,000.00 or the costs actually incurred.

The employer shall pay the actual estimate, or post security or bond in an amount sufficient to cover the estimated future cost of the liability. The division must approve the employer's election for the payment of the estimated future cost of liability.

A. If the employer elects or is required by the division to pay the actual amount estimated to cover the cost of future liability, the employer must pay this amount prior to the termination of self-insurance unless the employer and the division enter into a repayment agreement. The division has the authority to determine whether entering into a particular repayment agreement will meet its fiduciary responsibility to the compensation fund and shall consider the employer's financial stability, as reflected by its financial statements and other information of record, in making the determination and in agreeing to specific terms of repayment. The repayment term shall not exceed three (3) years.

Additionally, the agreement shall provide for the payment of interest on the principal which the division shall calculate on the effective date of the agreement, pursuant to W. Va. Code §23-2-13. The interest rate remains the same for the life of the agreement.

B. Upon terminating self-insurance, the employer may elect to continue making payment of benefits, pay the full amount of the future liability, or enter into a repayment agreement with the division for the amount of the future liability. If the employer retains full liability or enters into a repayment agreement, the employer must maintain the security for self-insurance, as defined by this rule. The division may impose a graduated premium tax to insure against such risk

13.10.d. If a contract of sale or transfer includes an agreement as to the parties' assumption of charges and contingent liabilities incurred by the self-insured seller prior to the effective date of the sale or transfer, and if a complete copy of the contract is filed with the division, the employer may request the division give effect to the agreement, so long as, in its opinion, the agreement meets the fiduciary requirements of the Fund. The division will issue a written decision on whether it will give effect to the agreement. The division is under no obligation to give effect to such an agreement.

A. If a completed copy of the contract of sale is filed with the division and the division gives effect to the agreement, and if the agreement provides that the buyer or person acquiring the business assumes the liability defined in referenced in this subsection, the buyer or person acquiring the business must pay the actual estimate of all the self-insured seller's accrued and contingent liability, as calculated pursuant to that section. Alternatively, the buyer or person acquiring the self-insured employer's business may, with the division's compensation programs performance council's approval, post security or bond in an amount actuarially determined to be sufficient to cover the assumed liabilities. The security or bond must cover the seller's entire period of self-insurance. In the event of a security or bond being posted by the buyer to cover the seller's liabilities, or if the buyer pays the actual estimate of the seller's liability, then the division will release the employer's like security or bond previously posted by the employer-seller.

B. If a complete copy of the contract of sale is not filed with the division and/or if the division does not give effect to the agreement, the division will hold the self-insured seller liable for all accrued and contingent liabilities resulting from injuries or diseases incurred by its employees during the period of self-insurance

and prior to the effective date of the sale or transfer, unless the employer pays into the fund an amount sufficient to cover the estimated cost of all such liability, as set forth in this subsection.

13.11. Present value payment of unpaid but awarded claims liabilities.

13.11.a. At any time, the division, in its discretion, with the approval of the compensation programs performance council, may permit ~~or require~~ any self-insured employer to pay into the Fund an amount of money equal to the present value, as determined by the division, of all unpaid but awarded claims liabilities for which the employer is liable.

13.11.b. The self-insured employer and the division may enter an agreement to allow the employer to make the present value payment of unpaid but awarded claims liabilities over a period of time, if the division determines that entering into an agreement is in keeping with its fiduciary responsibility to the Fund. The payment term shall not exceed three (3) years.

Additionally, the agreement shall provide for the payment of interest on the principal which shall be calculated on the effective date of the agreement, pursuant to W. Va. Code §23-2-13. The interest rate shall remain the same for the life of the agreement.

13.11.c. Upon making the present value payment of unpaid but awarded claims liabilities with one lump sum or with the last installment of the payment agreement, the self-insured employer is discharged from any further liability for the unpaid compensation and all future costs associated with the unpaid compensation shall be paid from the Fund.

13.12. Subscribing employers buy-out of liability previously incurred as a self-insured employer.

13.12.a. Employers who were previously self-insured employers and who on the effective date of this rule were continuing to pay compensation and expenses for certain of their employees due to their previous status as self-insured employers may elect to buy out their responsibility for those payments related to the prior self-insured status, pursuant to the provisions set forth in paragraph 13.10.b of this rule.

13.13. Administrative reports and fees.

13.13.a. Upon filing an application for self-insured status, an employer acknowledges its obligation to continue to make all payments and file all reports required by the Act or by the rules adopted by the division.

13.13.b. On or before the last day of the first month of each quarter, for the preceding quarter, each self-insured employer shall file with the division a sworn statement of the total earnings of all of its employees subject to the Act for the preceding quarter.

13.13.c. On or before the last day of the first month of each quarter or such other period as may be determined under section fourteen, for the preceding quarter, each self-insured employer shall pay into the compensation fund a sum sufficient to cover its proper portion of the expenses related to the administration of the Act.

A. The sum sufficient to pay a self-insured employer's proper portion of the expenses related to the administration of the Act is determined by applying a percentage to the base rate that has been assigned to the self-insured employer's industrial class.

~~B. — If a self insured employer does not subscribe to the second injury reserve of the surplus fund, pursuant to W. Va. Code §23-2-9(e), the sum sufficient to pay its proper portion of the expenses related to the administration of the second injury reserve of the surplus fund is determined by applying a percentage to the second injury reserve base rate that has been assigned to the self insured employer's second injury reserve industrial class.~~

~~C.B.~~ The sum sufficient to pay the employer's fair portion of the expenses of the disabled workers' relief fund.

~~D.C.~~ The sum sufficient to pay the employer's proper portion of the expense of claims for those employers who are in default in the payment of premium taxes or other obligations.

~~E.D.~~ The sum sufficient to maintain as an advance deposit an amount equal to the previous quarter's payment of each of the foregoing sums.

13.14. Current status of employers not affected.

13.14.a. Employers who at the time of the effective date of this rule are self-insured employers as regards to all or part of the compensation fund shall not lose that status due to the mere promulgation of this rule.

13.14.b. Employers who at the time of the effective date of this rule are subscribers to all of the compensation fund shall not become self-insured due to the mere promulgation of this rule.

§85-9-14. Tax liability policy guidelines for receivables management.

14.1. Definitions. As used in this section, the following terms, words, and phrases have the meanings stated unless in any instance where such term, word, or phrase is employed and the context expressly indicates that another meaning is intended.

14.1.a. "Direct Deposit Authorization Form" means a form developed by the division that is used to request that funds be direct-deposited into an account at a financial institution.

14.1.b. "Direct Withdrawal Authorization Form" means a form developed by the division that is used to transfer funds from an employer's account into the division's account.

14.1.c. "Electronic Data Interchange Payment" means a computer-to-computer transmission of a payment and related information in a standard format.

14.1.d. "Electronic Funds Transfer" means any transfer of funds processed by the division that is initiated through a terminal, telephone, computer, or magnetic tape for the purpose of instructing or authorizing a financial institution to debit or credit an account.

14.1.e. "NACHA" means the National Automated Clearing House Association, which is the national association that establishes the rules and procedures governing the exchange of commercial Automated Clearing House payments by depository financial institutions.

14.1.f. "Non-banking days" means local banking holidays, Saturdays, Sundays and legal holidays. ~~Legal holidays during 1996 are January 1 (New Year's Day), January 15 (Martin Luther King, Jr.'s Birthday), February 19 (Washington's Birthday), May 27 (Memorial Day), July 4 (Independence Day), September 2 (Labor~~

~~Day), October 14 (Columbus Day), November 11 (Veterans Day), November 28 (Thanksgiving Day), and December 25 (Christmas Day).~~ **The division shall have the discretion to make exceptions for late deposits due to extreme weather conditions such as floods, blizzards, fire, etc. Except as specified by the division, the employer must request this exception in writing.**

14.2 Receivables management. The workers' compensation division shall administer all aspects of receivables management. Receivables management includes, but is not limited to, the setting of a tax liability limit, collection activities, minimizing the risk of uncollectibles, resolution of specific collection issues to meet the overall financial objectives of the division, and the establishment and enforcement of collection procedures and processes to assist in the creation of a more financially viable workers' compensation system.

14.3. Evaluations. The division has the authority to set tax liability limits, payment terms, and reporting frequencies for all employers. Such tax liability limits, payment terms and reporting frequencies shall be set only after an evaluation of information to determine the risk of insuring a specific employer or group of employers.

14.4. Development of credit information. Credit information on any employer may be developed and evaluated by the division.

14.4.a. Credit information sources may include, but will not be limited to:

- (1) The application for coverage;
- (2) Secured creditors and types of collateral;
- (3) Guarantors of employer debt;
- (4) Determinations of whether the employer, owners, or officers have ever filed bankruptcy and, if so, what type of bankruptcy and when was the bankruptcy filed;
- (5) The provider of other types of insurance coverage;
- (6) The employer's most recent interim and prior year annual financial statements;
- (7) Detailed listings or summaries of assets, property and equipment, liabilities or equity;
- (8) Supplier and/or bank references;
- (9) Credit reporting agencies;
- (10) Federal, state or local government agencies; and
- (11) Audits conducted by those on behalf of the division.

14.4.b. Upon proper notification, the employer shall be required to provide detailed credit information. Failure to provide such information will result in the employer's classification at the most adverse (C) tax liability rating.

14.5. Tax liability rating. Each employer or group of employers may be assigned a tax liability rating by the division. The tax liability rating will correspond with the following credit descriptions.

TABLE 85-9-A.

<i>Credit Description</i>	<i>Tax Liability Rating</i>
Low risk of bad debt losses	A
Moderate-average risk of bad debt losses	B
High risk of bad debt losses	C

14.5.a. The assignment of a tax liability rating shall be based upon credit information that reflects upon the employer's willingness to pay, as evidenced by payment history in all aspects of its operation, the employer's ability to pay, as evidenced by its financial position, and other factors. Such other factors may include, but are not limited to:

- (1) The type of business entity;
- (2) The type of industry in which the employer is engaged;
- (3) The number of years the employer has been engaged in business;
- (4) The prior management history of the employer; and
- (5) The prior payment history and other experience with the division.

14.5.b. Tax liability rating reevaluations shall be performed when payment activity or a change in the employer's circumstances indicate such a review is merited. Within its discretion, the division may reevaluate the employer's tax liability rating at any time.

14.5.c. Delinquency or default by an employer will result in a downgrade of tax liability ratings or loss of payment plan options or loss of rating plan status or any combination thereof.

14.6. Assignment of tax liability limits. Each employer or group of employers will be assigned a tax liability limit by the division. The tax liability limit will correspond with the following tax liability ratings.

TABLE 85-9-B.

<i>Employer Tax Liability Rating</i>	<i>Tax Liability Limit Not to Exceed</i>
A	\$100,000
B	\$50,000
C	\$5,000

14.6.a. The tax liability rating shall be established using the criteria set forth in subsection 14.5.

14.6.b. The tax liability limit set forth in Table 85-9-B is the maximum amount of bad debt risk that the division may accept from specific employers in the appropriate category. The compensation programs performance council may amend the tax liability table in accordance with the provisions of 7.2 and 7.3 of this rule.

14.6.c. Each employer's tax liability limit will be based upon their individual tax liability rating and expected level of premium for the coverage period.

14.6.d. Payment terms shall be applied to individual employers so that the employer does not exceed preestablished tax liability limits.

14.7. Payment terms. Standard payment terms, as set out in the provisions of W. Va. Code, §23-2-5, and elsewhere in this rule, are applicable to all employers with the following exceptions.

14.7.a. Employers receiving guaranteed cost coverage with estimated annual premium taxes of \$500 or less may, at the discretion of the division, pay expected premium taxes on an annual basis at the beginning of each coverage period by filing an estimated premium tax report along with the payment for the expected annual premium

tax. Such employers must have had workers' compensation coverage with the division for a period in excess of three years to qualify for these payment terms. The division may require such employers to pay under these terms.

A. Such employers are required to file, at the end of the coverage period, a report reconciling estimated premium taxes with actual required premium taxes in the form prescribed by the division.

B. Underpayment of estimated premium taxes by 25% or greater may results in the application of interest and penalties.

14.7.b. In accordance with the provisions of subsection 14.6.d. of this rule, employers who fall within the applicable tax liability limits of Table 85-9-B shall be required to pay premium taxes on a frequency less than quarterly so that the employer does not exceed preestablished tax liability limits.

A. Payment terms shall be set forth for each employer.

14.7.c. Deposit rules. On an annual basis, the division shall determine whether an employer is a quarterly depositor, monthly depositor, bi-weekly depositor, or a weekly depositor. In determining the depositor category, the division shall consider the employer's tax liability rating and the aggregate amount of premium taxes expected to be reported during the forthcoming twelve-month coverage period not to be less than the premium taxes reporting during a "look-back" period. The look-back period is the twelve-month period ending the preceding June 30th.

A. Quarterly rule. The division shall determine an employer to be a quarterly depositor if the accrued premium tax liability is \$50,000 or less and the employer's tax liability rating is A or B. Quarterly deposits are required by the 30th day of the month following the end of the quarter. If the due date falls on a non-banking day, the deposit will be timely if made on the next banking day.

B. Monthly rule. The division shall determine an employer to be a monthly depositor if the accrued premium tax liability exceeds \$50,000 and the employer's tax liability rating is A or B. Monthly deposits are required by the 15th day of the following month. If the due date falls on a non-banking day, the deposit will be timely if made on the next banking day.

C. Bi-weekly rule. The division shall determine an employer to be a bi-weekly depositor if the accrued premium tax liability is \$50,000 or less and the employer's tax liability rating is C. For those with paydays on Wednesday, Thursday and/or Friday, deposits are required by the following Wednesday. When the payday falls on Saturday, Sunday, Monday and/or Tuesday, deposits are required by the following Friday.

D. Weekly rule. The division shall determine an employer to be a weekly depositor if the accrued premium tax liability exceeds \$50,000 and the employer's tax liability rating is C. For those with paydays on Wednesday, Thursday and/or Friday, deposits are required by the following Wednesday. When the payday falls on Saturday, Sunday, Monday and/or Tuesday, deposits are required by the following Friday.

Bi-weekly and weekly depositors shall have at least three banking days following the close of a weekly or bi-weekly period to make a deposit. If a bank holiday falls on any one of those three days, the employer will have an additional banking day to make the deposit.

E. Accelerated deposits. Employers who have accumulated \$100,000 or more in premium taxes on any day within a deposit period, either quarterly, monthly, bi-weekly, or weekly, shall make accelerated deposits. These employers are required to deposit the premium taxes by the close of the next banking day.

F. Safe harbor rule. Except as provided under the provisions of 14.7.a.B, the deposit obligation will be satisfied if the difference between the amount of tax that should have been deposited less the amount of tax actually deposited (shortfall) does not exceed the greater of \$100 or 2% of the amount required to be deposited. However, the under-deposit must be deposited by a specified "make-up" date. The make-up date for monthly depositors is the due date for the quarterly return. The make-up date for weekly or bi-weekly depositors and those required to make accelerated deposits is the first Wednesday or Friday (whichever is earlier), falling on or after the 15th day of the month in which the deposit was due. Deposit shortfalls will be subject to the application of interest and penalties in accordance with the Act and section eighteen of this rule.

14.7.d. Self-insured employers. Receivables for payments made by the division on behalf of a self-insured employer or any other employer, where applicable, are due to the division within thirty (30) days of the date of billing.

14.7.e. Failure. Failure of an employer to timely pay premium taxes or other payments, to timely file a payroll report, to timely file a premium tax deposit form, or to maintain an adequate premium tax deposit under this section, shall cause the employer's account to become delinquent. The division shall notify the employer, in writing, immediately upon its delinquency. Failure of an employer to timely make payments under the provisions of this rule shall result in the imposition of interest beginning with the due date of the payment.

A. The notification shall demand the filing of the delinquent payroll report, payment of delinquent premium taxes, the penalty for late reporting or payment of premium taxes or premium deposit, the interest penalty and an amount sufficient to maintain the premium deposit. Such demand shall require the employer to cure its delinquency within a stated time period.

14.8. Electronic funds transfer. The division, at its discretion, may require the electronic transfer of funds for the payment or refund of premium tax deposits. Such transfers may be initiated by the division or the employer through instructions to the employer's financial institution to debit or credit the employer's account.

The division anticipates the phase-in of electronic transfer of funds over a period of several years and intends to establish multiple methods from which to choose, flexible enough to fit the varying needs and technological capabilities of employers.

14.8.a. Electronic transfers of funds will not change the due date of premium taxes and will be processed through the Automated Clearing House (ACH).

14.9. Deposit forms. The division will provide premium tax deposit forms to employers. Employers shall include a properly completed coupon with each deposit.

14.9.a. In the case of a return period, either quarterly or annual, ending during a weekly or bi-weekly period, an employer must complete the premium tax deposit form so that it designates the proper return period for which the deposit relates. If the return period ends during a weekly or bi-weekly period in which an employer has two or more payment dates, two or more deposit obligations may exist and separate premium tax deposit forms would be required.

14.9.b. The last return for any employer who either goes out of business or otherwise ceases to pay wages must be marked "Final Return." An employer who has only temporarily ceased to pay covered gross wages, including an employer engaged in seasonal activities, must continue to file returns.

14.10. Notification. All notices regarding changes in tax liability ratings or payment terms shall be given in accordance with the provisions of section sixteen of this rule.

14.11. Discretion. The division will implement the assignment of tax liability ratings, tax liability limits and payment terms at its discretion on an individual employer basis depending on the circumstances of the employer and in keeping with the financial obligation of the division to the workers' compensation fund.

§85-9-15. Reports of gross wages; remittances; requests for refunds.

15.1. Reports of all information necessary to determine the employer's exposure base under the provision of section seven shall be made in the form or forms required by the division in compliance with the instructions given thereon.

15.2. Guidelines for reporting. The following guidelines shall be followed as appropriate:

15.2.a. Employers conducting operations in more than one classification shall segregate gross wages by each classification.

15.2.b. If the employer had no employees during a quarter the employer shall report zero wages and shall be assessed the minimum premium tax as prescribed by West Virginia Code, §23-2-5.

15.2.c. Theoretical gross wages shall be reported for members of any volunteer fire department, other emergency service organizations authorized under emergency services law (§§ 15-5-1 et seq.) or any other volunteer organization authorized to elect coverage under the provisions of West Virginia Code, §23-2-1(b)(7), by multiplying the "whole man hours" worked or served in that capacity by the State minimum wage.

15.2.d. Employers who regularly employ migrant laborers shall report gross wages for premium tax purposes in the same manner as reported in connection with a claim for benefits, taking into account the entire gross wage as defined herein.

15.2.e. Gross wages paid to employees while engaged in training programs must be reported and premium taxes must be paid thereon unless a valid contract exists which requires that said employees be covered by another employer.

15.2.f. Churches. If coverage is elected, total gross wages must be reported for all paid employees including the clergy.

15.2.g. Gross wage apportionment. Any individual or individuals who exercise ownership and control over a business entity shall report their gross wages as equally apportioned over the four quarters of the fiscal year (July 1 through June 30) in which such distribution of wages occurs.

For example, an individual who exercises ownership and control over a business entity receives a one-time payment of gross wages on June 15 in the amount of \$28,000. The gross wages will be equally apportioned over the current quarter and the three previous quarters, as follows: first quarter, \$7,000; second quarter, \$7,000; third quarter, \$7,000; fourth quarter, \$7,000.

A. Failure to accurately report quarterly estimated wages for any such individual shall result in employer default, assessment of late payment fees, interest, and such penalties as provided by law.

15.3. Remittances.

15.3.a. All remittances shall be made payable to the order of "Workers' Compensation Division - Bureau of Employment Programs" and shall be mailed with the payroll and premium tax report to the address provided by the division.

15.3.b. Each report or payment mailed to the division must be submitted in a separate envelope. Any such report of payment shall be deemed to be received on the date the envelope transmitting it is postmarked by the United States postal service.

15.3.c. Terminations. When an employer fails to provide written notification to the division that coverage is to be terminated, the division will assess the minimum premium tax per quarter through the quarter in which the notice is received.

15.3.d. Payment allocations. The division shall maintain the authority to allocate payments, including but not limited to, premium tax payments, late reporting and payment penalties, interest, penalty premium rate taxes, and other premium tax surcharges to the employer's longest outstanding amounts owed to the division.

15.4. Refunds.

15.4.a. In circumstances where an individual or individuals exercise ownership and control over a business entity that has made application for a refund of premium deposit, as a result of termination of business, or for a refund as a result of misclassification, reclassification or any other reason and such individual or individuals exercise ownership and control over another business entity that is delinquent or in default, or has entered into a current reinstatement agreement with the division, as defined by the provisions of West Virginia Code, §23-2-5, then the refund shall be denied under the provisions of this rule. The division shall apply such refund amount to the outstanding liabilities of the delinquent or default employer.

15.4.b. Upon an employer's application for refund of the premium tax deposit, the division shall determine whether a gain or loss has occurred in relation to the employer's account. The division shall determine the following factors: total premium taxes paid, ~~total claims paid~~ and the cost of known claims reserved. If the total premium taxes paid are less than ~~the total of claims paid~~ and the costs of known claims reserved, the division shall deny the request for refund and apply the deposit or applicable portion thereof against the employer's account. If the total claims paid and the costs of claims reserved are less than total premium taxes paid, then the deposit shall be returned to the employer.

15.4.c. The division shall notify in writing each employer denied a refund under the provisions of this rule.

A. Such notification shall include the reasons for denial as well as the name of the business entity to which account the refund amount has been applied.

15.4.d. Any such application for refund shall include a complete listing of all operations or businesses over which the employer or the employer's owners or officers exercise ownership and control. Such application shall be in a form or forms supplied by the division.

§85-9-16. Name and address of employer; legal notice; fee for employer records and publications.

16.1. General. Except as hereinafter provided, the name and address given by the employer on the application for coverage shall be used by the division for giving any notice required by the statute or by this rule, unless a formal request for a change of name or address is made by the employer as hereinafter provided.

16.2. Change of name or address. Any employer changing the name or the address of the business must promptly notify the division, in writing, and request that the name or address be changed on the division's records. Every employer required to register with the Office of the Secretary of State shall provide evidence of any name change from that office.

16.2.a. In case of the appointment of a receivership, the full name of the receivership shall be reported.

16.2.b. If the employer wishes to have certain notices and correspondence directed to a subsidiary, a branch office or agent, the employer must notify the division in writing of the name and address of said subsidiary, branch office or representative and specify the circumstances under which said notice is to be given. It will be the responsibility of the representative to notify the division when such representation ceases and to provide a current address to which the employer's notices and correspondence are to be sent.

16.3. Effect of failure to request change of name or address. In the absence of a request for a change of name or address by the employer, any notice given by the division to the employer at the address and in the name shown on the division's records shall constitute constructive notice to the employer of any action taken.

16.4. Legal notice to attorney or agent. In any matter arising under this rule in which the division is required to give notice to a party, if a party is represented by an attorney or other representative, then notice to the attorney or other representative shall be sufficient notice to the party so represented.

16.5. Fee for employer records and publications. The division may charge a reasonable fee for copies of any employer records and general publications.

85-9-17. Sale, transfer, absorption or merger of business.

Transfers of business assets as well as successor business obligations are provided for in W. Va. Code, §23-2-14 and §23-2-15.

17.1. Obligations of selling employer. If any employer shall sell or otherwise transfer substantially all of the employer's assets, so as to give up substantially all of the employer's capacity and ability to continue in the business in which the employer has previously engaged, or if any employer shall sell or otherwise transfer a portion of the employer's assets so as to affect the employer's capacity to do business, then:

17.1.a. Such employer's premium taxes, premium deposits, interest, penalty premium rate and other payments owed to the division shall be due and owing upon execution of the agreement of sale or other transfer;

17.1.b. Any repayment or reinstatement agreement entered into by the selling employer with the division pursuant to W. Va. Code, §23-2-5, shall terminate upon execution of the agreement of sale or transfer and all amounts owed to the division shall become due;

17.1.c. The division shall continue to have a lien against the remaining property of such employer as well as the sold or transferred assets; and

17.1.d. Such employer shall remain liable for all amounts due to the division until such amounts are fully paid. When a successor employer succeeds to the selling employer's liability, the selling employer remains jointly and severally liable for such obligations.

17.2. Obligations of successor employer. If an employer acquires by sale or such other transfer or assumes all or substantially all of a predecessor employer's assets, then:

17.2.a. Liens for payments owed to the division for premium taxes, premium deposits, interest, penalty premium rate and other payments owed to the division by the predecessor employer shall be extended to the successor employer;

17.2.b. Liens held by the division against the predecessor employer's property shall be extended to all assets of the successor employer;

17.2.c. Liens extended to the successor employer by operation of the West Virginia Code or this section are enforceable pursuant to West Virginia Code, §23-2-5a;

17.2.d. Unless all amounts owed by the predecessor employer are paid prior to or at the sale or other transfer, prior defaults by a predecessor employer shall accrue to the successor employer for purposes of determining whether the successor employer is in default and whether the successor employer is subject to the penalty premium rate provisions of West Virginia Code, §23-2-5(f); and

17.2.e. The successor employer shall assume all liabilities, charges and contingent liabilities of the predecessor employer and shall be subject to modifications to premium rates as contained in subsection 17.3.

17.3. Premium tax rates; sale of business or assets. If an employer acquires by sale or such other transfer or assumes all or substantially all of a predecessor employer's assets, then:

17.3.a. ~~If the predecessor's experience modification factor is greater than one then, if~~ If the new employer does not already have an experience modification factor for that same class, the new employer shall assume the predecessor employer's experience modification factor for the payment of premium taxes until sufficient time has elapsed for the new employer's experience record to be combined with the experience record of the predecessor employer so as to calculate the new employer's own experience modification factor.

~~A. If the predecessor's experience modification factor is less than one then, if the new employer does not already have an experience modification factor for that same class, the new employer shall be assigned the base rate.~~

17.3.b. If the new employer has an experience modification factor for that same class, the new employer shall be assigned a new rate computed on the basis of the new employer's and the predecessor employer's combined experience record. The new rate will become effective on the first day of the coverage period following the sale or other transfer.

17.3.c. If the new employer is a self-insurer and is conducting business in the same class of the business or assets purchased, then the self-insurer must make application to the division and post such additional bond as may be required pursuant to section thirteen of this rule.

17.3.d. If the predecessor employer is a self-insurer, then, if the new employer does not already have an experience modification factor, the new employer shall be assigned the base rate for that class, or if the new

employer already has an experience modification factor for that same class, the new employer shall continue under that experience modification factor.

17.4. In the event of sale or other transfer of assets not covered by the above provisions, the division will make such ruling in the case as is proper, following the principles and policies set forth in this rule.

17.5. Agreements on assumption of charges. If a contract of sale or transfer includes an agreement as to the parties' assumption of charges and contingent liabilities incurred by the seller prior to the effective date of the sale or transfer, and if a complete copy of the contract is filed with the division, the employer may request the division give effect to the agreement, so long as, in its opinion, the agreement meets the fiduciary requirements of the Fund. The division will issue a written decision on whether it will give effect to the agreement. The division is under no obligation to give effect to such an agreement, but shall do so if it is reasonable and meets the fiduciary requirements of the fund.

17.6. Certificate of good standing to transfer a business or business assets. If an employer subject to this section pays to the division, prior to the execution of an agreement of sale or other transfer, a sum sufficient to retire all of the indebtedness that the employer would owe at the time of the execution, then the division shall issue such a certificate to the employer that the employer's account is in good standing and that the assets may be sold or otherwise transferred without the attachment of the division's lien.

17.6.a. In the event the employer would not owe any sum to the division on the date of execution of the agreement, then a certificate of verification of good standing, as previously described, shall be issued to the employer.

17.6.b. For clarification purposes, a "certificate of coverage" which may be issued by the division to verify that an employer has workers' compensation coverage shall not be an acceptable substitute for a "certificate of good standing to transfer a business or business assets".

17.7. Presumption. The sale or other transfer of an employer's assets shall be presumed to be a transfer of all or substantially all of the assets if the transfer affects the employer's capacity to do business. The presumption may be overcome upon petition or petition and administrative hearing in accordance with the provisions of West Virginia Code, §23-2-15.

17.8. Construction. The provisions of this section are expressly intended to impose upon such successor employers the duty of obtaining from the division or predecessor employer, prior to the date of such acquisition, a valid "certificate of good standing to transfer a business or business assets" to verify that the predecessor employer is in good standing prior to sale or other transfer.

§85-9-18. Late penalties for filing and reporting; penalty premium rate.

18.1. Late penalties. In accordance with the provisions of West Virginia Code, §23-2-5(b), each employer who shall fail to timely file any payroll report or timely make any payment due under this rule, or both, for any payment period commencing on and after the first day of July, one thousand nine hundred and ninety-five, shall pay a late reporting or payment penalty of the greater of fifty dollars (\$50) or ten percent (10%) of the payment due, but not to exceed five hundred dollars (\$500), with such report. Such late penalty shall be paid at the earliest of thirty (30) days from date of notification or the date when the next report and payment are due. If such late penalty is not paid when due, the same may be charged to and collected by the division from the employer's premium deposit account or otherwise as provided for by law.

18.1.a. Interest shall accrue and be charged on all payments, delinquent premium tax payments, ~~late reporting or payment penalty~~, and premium deposit shortfall, all of which or whichever may be applicable, pursuant to West Virginia Code, §23-2-13.

18.2. Penalty premium rate. In accordance with the provisions of West Virginia Code, §23-2-5(f), whenever a penalty premium rate is imposed on an employer and such employer fails to timely pay such penalty premium rate, then such amount shall be subject to late penalties for filing and reporting and interest accrued which shall be in accordance with West Virginia Code, §23-2-13.

§85-9-19. Implementation.

19.1. The division shall administer and implement this rule to minimize the workers' compensation fund deficit and encourage the prevention of work related injuries. In accordance with this objective, the division is imbued with the authority to implement the provisions of this rule in the sequence and time frames required and in such a manner as the division, with the agreement of the compensation programs performance council, sees fit. The implementation of this rule is contingent upon the capacity of the division to properly administer the same and upon whether such is financially viable given the fiduciary obligations of the compensation programs performance council and the division. It is the intent of this rule, although it is not a requirement of this rule, that it be implemented in its entirety on or before July 1, 1998.

19.2. The division with the agreement of the compensation programs performance council, shall have the authority to manage its capacity to implement the provisions of this rule by requesting, selecting, acquiring, directing and controlling the financial and human resources, along with the processes and technology, necessary to implement this risk management system.

§85-9-20. Administrative protests and hearings.

20.1. Protest. An employer may protest any order or decision made under the provisions of this rule.

20.2. Petition. In order to preserve its right to protest, the employer must file a written petition with the division, stating the order or decision protested and the exact nature of the issue in controversy. In the written petition, the employer must designate a person or entity to receive official notices related to the protest and the employer must provide the address of the person or entity. The written petition must be received by the division within thirty (30) days after the employer receives notice of the objectionable order or decision or within sixty (60) days of the date of the objectionable order or decision, regardless of notice. This period may not be extended or waived.

20.3. Acknowledgment. Within thirty (30) days after receiving the written protest, the division shall issue a notice acknowledging the protest and providing an opportunity for hearing.

20.4. Subsequent administrative hearing proceedings shall be in accordance with 85 C.S.R. 7 " Rules for Selected Hearings."

§85-9-21. Information.

21.1. A request to inspect or copy any public record of the division shall be made directly to the director of the workers' compensation division under the provisions of West Virginia Code, §23-1-4.

21.2. All requests for information must state with reasonable specificity the information sought. The director, upon demand for records made under this rule, shall as soon as is practicable but within a maximum of five days not including Saturdays, Sundays or legal holidays:

21.2.a. Furnish copies of the requested information;

21.2.b. Advise the person making the request of the time and place at which the person may inspect and copy the materials; or

21.2.c. Deny the request stating in writing the reasons for such denial. Such a denial shall indicate that the responsibility of the director and the division to produce the requested records or documents is at an end, and shall afford the person requesting them the opportunity to institute proceedings for injunctive or declaratory relief in the circuit court of Kanawha County

21.3. The division may release, pursuant to a proper request, the following information:

21.3.a. The base premium tax rate for a specific employer;

21.3.b. Whether or not a specific employer has obtained coverage under the provisions of this chapter;

21.3.c. Whether or not a specific employer is in good standing or is delinquent or in default according to the division's records and the time periods thereof; and

21.3.d. If a specific employer is delinquent or in default, what the payments due the division are and what the components of that payment are including the time periods affected.

21.4. **Without an appropriate release or waiver, the** the division may release or communicate publicly **only that any** information which it may release under the provision of subsection 21.3 **and West Virginia Code §23-1-4.**

21.5. The division may charge fees reasonably calculated to reimburse the division for its actual cost in making reproductions of such records, including reimbursement for costs of computer programming where applicable.

§85-9-22. Severability

If any provision of these rules or the application thereof to any entity or circumstance shall be held invalid, such invalidity shall not effect the provisions or the applications of these rules which can be given effect without the invalid provisions or application and to this end the provisions of these rules are declared to be severable.

Bureau of Employment Programs
112 California Avenue
Charleston, West Virginia 25305-0112

Gaston Caperton
Governor
Andrew N. Richardson
Commissioner



January 7, 1996

The Honorable Ken Hechler
Secretary of State
State Capitol Building
Charleston, WV 25305

RE: Final Filing
Exempt Legislative Rule
Title 85, Series 9
"Risk Management"

To the Honorable Ken Hechler,

Please consider this letter as my written approval for the final filing of the above noted exempt legislative rule.

Pursuant to Enrolled Committee Substitute for House Bill 4030, Regular Session, 1994, the Department of Commerce, Labor and Environmental Resources was abolished. Pursuant to that same bill and to Executive Order No. 5-94 of the Governor, the Commissioner of the Bureau of Employment Programs is empowered to promulgate rules without the consent or approval of a department secretary.

Thank you very much for your assistance in this matter.

Very truly yours,


Andrew N. Richardson
Commissioner

ANR:RBS:llm

85 C.S.R. 9

"Risk Management Rule"

Public Hearing

DATE: October 3, 1996

Location: Martinsburg, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment Yes No
<i>Don J. Jorgensen</i>	<i>1161-2 Winchester Ave Martinsburg WV 25401</i>	<i>304-263-5680</i>	<i>Ecophys Science Corp</i>	☒
<i>Mary B. Reed</i>	<i>1161-2 Winchester Ave 1161-2 Winchester Ave Martinsburg WV 25401</i>	<i>304-263-5680</i>	<i>Snyder Environmental Ser</i>	☒
<i>Terry Eichelberger</i>	<i>P.O. Box 749 Laurel, MD 20725</i>	<i>301-953-7650</i>	<i>Allegany Aggregates Inc.</i>	☒
<i>HOWARD C. NASON</i>	<i>P.O. Box 1231 ABERDEEN, MD 21001</i>	<i>410-278-5287</i>	<i>Fairfax Sand & Gravel Stone ENGINEERING / DOCUMENTATION SYSTEMS INC</i>	☒
<i>Karen Kisner</i>	<i>1161-2 Winchester Ave Martinsburg WV 25401</i>	<i>(304) 263-5680</i>	<i>Bankable Home Health</i>	☒
<i>Debara Henry</i>	<i>1161-2 Winchester Ave Martinsburg WV 25401</i>	<i>(304) 263-5680</i>	<i>Bankable Home Health</i>	☒
<i>DAVID ROBERSTEIN</i>	<i>330 E. KILBOURN AVE #450 MILWAUKEE WI 53202</i>	<i>414-225-5140</i>	<i>(ON BEHALF QUAD/GRAPHIC) ANR ASX SERVICES</i>	☒
<i>Nita McGinnis</i>	<i>3039 VENTURE CT, P.O. Box 480 Martinsburg, MD 21773-0480</i>	<i>301-790-0333</i>	<i>Warren Electrical Const. Corp.</i>	☒

Public Hearing: October 3, 1996, Martinsburg, W. Va.

Please Print:

[illegible]

85 C.S.R. 9 "Risk Management Rule"
Public Hearing: October 3, 1996, Martinsburg, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment Yes No
DAVID M. PITTSBURGH	P.O. Box 945 Martinsburg, WV Martinsburg, WV	267-8959	W. HAZEL or Millch Contracts	X
JERRY A. JAMES	1102 Edwin Miller Blvd. Martinsburg, WV	263-8833	Shawnee Girl Scout Council	X
Carol Diers	1602 Edwin Miller Blvd Martinsburg, WV	263-8833	Shawnee Girl Scout Council	X
KATHA J. MORTON	P.O. Box 207 Martinsburg, WV	876-6396	Smallwood Smelting	X
DeLuna Patterson	P.O. Box 800 Martinsburg, WV	876-3258	Animal Welfare Soc	X
CHARLOTTE BURNETT	P.O. Box 584 Martinsburg, WV	725-1102	Animal Welfare Soc	X
Alonda Austin	570 Tuscarora Hwy Charles Town, WV	725-0805	James C. McKeithen MD PC	✓

85 C.S.R. 9 "Risk Management Rule"

Public Hearing: October 3, 1996, Martinsburg, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment Yes No
HURTHEY A COLE	P.O. Box 1150 FALLING WATERS WV	304-274-2551	EDWARD M. RUDE CARRIER INC	✓
Calvin Whittington	Research Park Inwood, WV	304-219-7809	The Library Corporation	✓
Dottie Keyser	302 Shawnee Dr. Winchester, Va.	540-669-9206	American Woodmark	✓
S. A. Scott	Rt 1 Box 135 Gerards town WV	304-229-5353	National Fire Products	
NANCY BOWERS			Workers' Comp.	
Carol Pitts			Shawnee Girl Scout Council	
Bobbie Kave	Rt 1 Box 173 Dallings Water, WV	304-274-1703	Kave's Used Autos	✓
Helen Miller	1124 FAIRFAX ST. Berkeley Spgs WV	304-258-5601	WAR Memorial Hosp	✓
Ronald Talley	1124 FAIRFAX ST Berkeley Spgs, WV	304-258-1234	WAR Memorial Hosp	✓
Mammy Boward	Rt. 1 Box 125 Shepherdstown	304-262-3226	Martin + Seibert LC	
LINDA KIME	132 South Queen Street Martinsburg, WV 25401	304-263-3388	Smith NABENBACHER Tax, Inc	

85 C.S.R. 9 "Risk Management Rule"

Public Hearing: October 3, 1996, Martinsburg, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment Yes No
<i>[Signature]</i>	111 Virginia Ave Martinsburg WV 26007	304-257-1266	Grant Co Commissioner on Aging Agents Tru & L	✓
Nancy Lacourt	669 Valley Road Berkeley Springs WV	304-258-1370	Impl Ctr Inc	✓
Craig Potter	Route 2, Box 214 Hoffman Rd. 7704 Water Hgt. - Shepherd 1384 Charles Talbot Valley Martinsburg WV 25401	304-274-0458 (304) 264-9318	Gibbs Rifle Company Water Hgt. - Shepherd Valley	✓
Steve Dunn	NA NATIOMAL FRUIT PRO	540-665-4679	P.O. Box 26040 WINCHESTER VA	✓
Melissa Nichols	1 Jeffersonian Manor CHARLES TOWN WV R1 Box 219	304-725-6575	IAS of WVA + Charles Town	✓
OTHO S. Lewis	Martinsburg W.Va. 25401	304-267-2033	Levin Bros. Bldg.	✓
Cheryl A. Hurley	PO Box 151 Berkeley Springs WV	258-4594	Morgan County Rescue	✓
Debbie Audis	POB 3086 Shepherdstown WV 25443	876-6010	James C. McGhee MD PC	✓

85 C.S.R. 9 "Risk Management Rule"

Public Hearing: October 3, 1996, Martinsburg, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment Yes No
Shirley Moreland	Winchester, VA 130 N. 1st Street Ave.	540 662 6641	Duncan Enterprises	—
Warren Perrine	530 Orchard Dr. Parkersburg, W.V.	(304) 485-3775	W.V. Safety Council	✓
Mark Bannan	3102 Shoshone Dr. Winning, Va	540-665-9205	Ames. Woodman	✓
Ruth M Byers	101 No Spring St Mtsbgo WV	304-263-0891	Cox Nichols Hollida EPA's	✓
Mrs. Daniel G. Aultman	Rt 2 Box 148 Hodgenville	304-754-3996	Daniels Aultman orchard	—
David M. Hartley	PO Box 1706 Mtshg WV	304-267-4710	Eastern Parkhandle floor building	✓
Frank Smith	1700 Bunker Miller Hwy	(304) 262-8811	LEISURE INN	—
Mark Shier	1608 Bunker Dr. Winchester	(540) 662-7605	National Fruit Product	—
Donna Trueax	P.O. Box 480 Myersville, MD	(301) 790 0332	Warren Electrical	✓
MARY MORGOLD	HC 83, Box 8 COST RIDER, WV 26810	(304) 897-9911	HARDY TELECOMMUNICATIONS	✓
Roger Lyles	1312 Old Country mty. W. Va	304-267-0804	MFFL INC	✓

85 C.S.R. 9 "Risk Management Rule"
Public Hearing: October 3, 1996, Martinsburg, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment Yes No
SHARRON LAMP	PO BOX 190 SUMMIT POINT WV 25406	304-725-8444	Summit Point Raceway	
GERE FLICK	21 COUNTRY WOODS SCHAELESTON	304-744-4264	EMPLOYERS SUC CORP	✓
GARNETT CANBY	322 WILLIAM S ST.	263-1398	SAME	?
John C. DeFries	212 S. Mildred Ranson	304-725-1010	CITY OF RANSON	✓
JOAN HARMON	PO Box 788 Martinsburg WV 25401	263-0884	Bonded Carriers	
Benny Smith	136 Warm Springs Ave Martinsburg WV 25401	263-7857	Taylor Sports + Rec.	✓
Marcy Zeller	PO Box 806 Martinsburg WV 25401	822-5112	Emp. G. Commission	✓
Linda Haushalter	Rt. 1, Box 25 Berkeley Springs, WV	304-258-1368	Eddie's Tire Service, Inc.	✓
Kevin DeHaven	PO Box 10 Martinsburg, WV	304-725-2076	Halltown Paperboard	✓
Marta L. Roman	3271 Redwyn Dr Martinsburg WV 25401	304-267-3696	Quebec Printing/Ink	✓
Ron Porterfield	853 Wilson St. Martinsburg, WV 25401	304-267-7203	Porterfield's Car Wash	✓

85 C.S.R. 9 "Risk Management Rule"
Public Hearing: October 3, 1996, Martinsburg, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment Yes No
DAVID WILLEY	PO BOX 885 MARTINSBURG WV	267-8966	CAPITOL CEMENT	X
GREG GAMBLE	2600 Athens Court Martinsburg WV	263-0979	UTC	X
Michael Van Nostrand	PO Box 1185 Mtburg.	263-3841	Jefferson Dist.	X
Henry Barnes	PO Box 1741 Charleston WV	304-344-5800	WUSIA	✓
LISA RINER	PO Box 501 25419 FALLING WATERS WV	(304) 274-2353	ABC Business Services	X
Eileen Keane	Rt. 1, Box 5 Falling Waters, WV	(304) 274-2474	Mandowee Assembly 06-2003	X
Bill Robie	35471 Troon Court Round Hill VA 20141	540-338-4455	Robie Homes Inc	X
Claudia Bentley	P.O. Drawer 1419 Martinsburg, W.Va.	304 264 4211	Bowles Rice et al.	X
MARK A HOFFMAN	10300 EATON PLACE #300, FALLS CHURCH VA 22030	703-218-1352	CEN-TEX CONSTRUCTION	X
LEE GREENE	Rt 3 Box 840 TRAN TRUST Bldg WV	304 876 3647	RIDGEVIEW FARM & ORCHARD	

85 C.S.R. 9 "Risk Management Rule"

Public Hearing: October 3, 1996, Martinsburg, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment Yes No
Judy Janda	Rt. 1 Box 48E Gerrardstown, WV	229-2618	Better Homes Contracting	X
Gay Henderson	PO Box 3298 Shepherdstown	876-2887	Lynbrook Associates	X
Jim Mott	PO Box 1541 Millsboro	263-0836	Bowles Rice	
Maura Brown	PO Box 476 Shepherdstown	876-6835	Brown's Tree, Towing & Auto	X
Robert C. Tass	RT 1 Box 585 Kearneysville	725-1252	Town & Country Nursery C/R TV Cable, Inc.	X
Marlene Young	RT 1 Box 585 P.O. Box 398 Hartwood, WV	(301) 662-6822		X
Carolea Brown	214 S. Bradlock St Martinsburg, WV	540-667-7722	Shawnee Mortgage	X
Sam Robinson	P.O. Box 11	301-267-3672	Quessons Farming	
Becky Shaffer	116 E King St. Martinsburg, WV	304-263-0622	Meals on Wheels	X

85 C.S.R. 9

"Risk Management Rule"

Public Hearing

DATE: September 20, 1996

Location: Wheeling, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment Yes No
PS Nelson	Rothesay Ave Carnegie PA 15106	412/279-9151	Family Toy Whse	x
Sue Barron	One North Shore Center Fgk PA 15212	412-322-2200	Willis Corson Corp	
Rick Miller	100 Association Dr Chas Wv	304-344-9744	WV Hospital Assoc	
Dea McGeer	1 Medical PK	304-243-3197	Wheeling Hcs	
James Pell	1500 Chapline St.	304-234-3819	City of Wheeling	✓
Jim Heavey	1201 Pleasant Ave	304-737-3481	Brooke Co. Board	✓
Doug Merritt	1134 Market St.	304-234-2219	Wheeling Pittsbyl Steel	
Geneva Cole	13 Mozart Rd	304-242-0951	Plastic Surgery INC	✓

85 C.S.R. 9 "Risk Management Rule"

Public Hearing: September 20, 1996, Wheeling, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment Yes No
ELAINE SATSMAN	400 THREE SPRINGS WEIRTON, WV 26063	804-797-4603	WEIRTON STEEL CORP.	X
Pamela Leitt	3007 Chapline St. Wheeling, WV 26003	(304) 292-6140	Fleet Service Co	X
Susan Steppulis	1030 M. St. - Wheeling	(304) 232-3344	Stone & Thomas	X
DAVID Johnson	3825 Jacob St	304-232-6006	Scott Fluid Power	X
Arden D. Collins	307 Kearing St	304 232-3990	Huanta Iron Supply	X
Edward M. George III	61 17th St	304 232-6810	Hill's Garrell & L	X
MURRAY A. MAERZ	940 MARKET ST	304 238-5039	NOX	X
Erin Bonan	4307 Main St. Benwood	232 4320	City of Benwood	X
Janice Bruschel	4309 Main St. Benwood	232 4320	City of Benwood	X
Tracy Roberts			WVWA	X

85 C.S.R. 9 "Risk Management Rule"

Public Hearing: September 20, 1996, Wheeling, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment Yes No
JOSEPH C FORNATI	102 N 20th sidewalk	277-3215	SOCIETY OF ST VINCENT DE PAUL	✓
SANICE BELL	402 WING AVE GLENDALE WHEELING	845-5571	CITY OF GLENDALE	✓
PAULIS KUOLAK	2624 VANCE AVE NW	277-3232	FRI-STATE PETRO-CORP INTERSTATE PETRO-CORP	✓
Mary Cargan	4861 1/2nd Bld	695-7050	Ranchford Ford Mkt	✓
Jennifer Jeffers	1000 Chapline St.	233-9627	Youth Services System Inc.	✓
Mary J. Rhine	1500 Chapline St	234-3677	City of Wheeling	✓
Ed McCallister	2 Hawley Bldg	232-1131	Market Square Hum Resources	
Christine Uscio	300 Hawley Bldg	232-2520	The Hawley Corp	✓
Tom Jalkowski	21 S. Huron ST.	232-2190	OVRTA	✓
Randy Cole	401 Main Street	232-5550	Cummins & Associates	
Shelly Bungeard	75 Hickell Ave Wheeling	242-9807	Schwerdtfeger Const.	✓

85 C.S.R. 9 "Risk Management Rule"
Public Hearing: September 20, 1996, Wheeling, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment Yes No
CHRISTOPHER BUDGE	914 MARKET ST PARKEESBURG WV	304-422-1868	WVS. SPEAK OLYMPIA	
PAUL MILLER	ONE NO. SHORE CTR PRAIRIE, PA.	412-322-2200	Willis Gorman Corp.	
Cele Duval	324 7 th St Mundsville WV	(304) 845-8085	Northern Panhandle Soil	
Harry L. Cox	" " " "	" " " "	Conservation District	
THOMAS GEORGE	100 EAST CAVE AVE	273-1820	C. M. SLEDD CO	
Paul Chirlester	5000 Bradenton Ave	614-793-8000	Frank Gates	
John Roadman	P.O. Box 390 Wellsburg PA	304-737-3711	Brunner-Fernand Co.	
P. CRAIG VOLPE	655 Rodi Road	(412) 247-2785	CRA Managed Care	
Harold R. Black	123 N. 23rd St	(304) 277-1651	Harold R. Black Co.	
JOE CAMPINELLI	PO Box 1300, New Cumberland WV	524-3351	HARRIS CITY SCHOOLS	
MARJORIE KLEMM	41 EUREKA AV	242-3171	1st R BLOCK.	

WKG

85 C.S.R. 9 "Risk Management Rule"

Public Hearing: September 20, 1996, Wheeling, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment Yes No
Rhonda White	Oglebay Park Wheeling	243-4009	Wheeling Park Commission	
Dannie Vocum	Wheeling Jesuit Univ.	243-2402		✓
Louise Vidone	St Vincent De Paul	232-4230	St Vincent De Paul	
Bess Simms	2000 Gore St/Wheeling	234-8284	OVMC	
Margaret Callen	106-15th St, ally.	233-1922	Wheeling Home Arts	✓
Judith Radcliffe	203 S. Front St. W.V.	233-3474	REM-WV, Inc	
Louise Randall	21 S. Huron, W.V.	232-2190	OVRTA	
Kathy Robinett	4415 5th Ave Pts 15213	(412) 647-7416	NDC Real Estate Mgmt	
Carmella Szymialis	430 Marion St	232-4320	City of Benwood	✓
Egkka Storch	P.O. Box 911	232-7525	O V Steel	
Eury VanDoeke	11 Community St.	242-4447	Wheeling Housing Authority	✓

Public Hearing: September 20, 1996, Wheeling, W. Va.

[illegible][illegible]

**85 C.S.R. 9 “Risk Management Rule”
Public Hearing: September 20, 1996, Wheeling, W. Va.**

Please Print:

[illegible]

Public Hearing: September 20, 1996, Wheeling, W. Va.

Please Print:

[illegible]

85 C.S.R. 9
"Risk Management Rule"

Public Hearing
DATE: September 19, 1996
Location: Morgantown, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment	
				Yes	No
STEVEN MCKAY	RT 10 Box 467 MGTN	291-0728	McKay Builders		
FREDRICK LEMASTERS	RT 11 Box 3 Benches, WV 30410	HOME 538-7761 HOME 289-3050	American Woodmark Corporation	?	
Frank Gerwig	P.O. Box 1306 Cumberland Md 21501	301-777-7875	Frank Gerwig & Assoc		X
SARAH D. KELLEY	P.O. Box 468 Beltsville, WV 26531	304-292-2034	Culp Paving Co.		X
CHRIS A. ILARSI	1225 PINEVIEW DRIVE MORGANTOWN WV 26505	304 599-0802	PINEVIEW SUPPLY		X
MARVIN TENNANT	RT 5 MORGANTOWN TENNANT CONSTRUCTION	296-2947	TENNANT CONSTRUCTION	?	
BILLY PICKRELL	RT 200 FARMINGTON RD CUMBERLAND MARYLAND	363 6289	SCOTT VALLEY	?	

85 C.S.R. 9 "Risk Management Rule"

Public Hearing: September 19, 1996, Morgantown, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment Yes No
Arthur L. Ford	283 SPRING	598-0769	ART FORD BUILDER CENTR.	✓
Diana Keane	648 Broadway Star City, WV 36455 state st.	534-5900	PTMI	✓
Charles Robinson	Weirton, WV 26061	748-5680	Weir-Cove Moving & Storage Co.	✓
Charles R. Lewis	601 W. STATE AVE	789-2512	LEWIS Brothers Painters	✓
Greider Shoenaker	100 Valley View Dr. Romney WV	822-5296	Romney PNA	✓
Robert M. Alexander	55 WEST ST MORGANTOWN WV 26505	367-0770	ELECTRONIC WARFARE ASSOCIATES	✓
Kenneth Jackson	Rt 1 Box 61A Morgantown WV 26505	983-8189	K. Ray Inc	✓
Gary Waskey			Emp/Exp Serv Corp	
Michael Lust	1130 Greenbush Rd Morgantown WV	291-9066	CCN	

85 C.S.R. 9 "Risk Management Rule"

Public Hearing: September 19, 1996, Morgantown, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment Yes No
Susan Graves	117 Schubert Plce Morgantown, WV 26503 PO Box 478	599-1019	Am. Chesapeake Realty Mgmt	✓
Gina M. Taylor	Readsville, WV 26517 PO Box 418	204-864-3321	Fibair	✓
Philip Pompili	Readsville, WV 26517	864-3321	Fibair	✓
Thomas Mason	P.O. Box 287 Salem WV 26026 Route 1 Box 135	782-3991	Judal Reads	✓
Kathy D. Linebury	Gerrardstown WV 25420	229-5353	National Fruit Prod Co Inc	✓
Cindy Frich	105 Scenery Dr	599-1309	MARLENE FRICH for HOUSE OF DELEGATES	✓
Robert H. Andriola	PO Box 199 Arthurdale, WV 26500	598-5606	Mon-Valley Surveying	✓
Sammy Devine	1415 Buckhannon Pike	622-7713	Journal of Puttler Fort	✓
Jack Dordy	Puttler Fort, WV 26301 Rt. 3 Box 204	"	"	✓
Lora Benson	Bruceston Mills WV 26525	399-4382	Alaska, Inc.	✓

85 C.S.R. 9 "Risk Management Rule"
Public Hearing: September 19, 1996, Morgantown, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment Yes No
Carmy Guidi	1200 J.A. Anderson Dr MGLI	598-1544	MGLI	—
Kenny Wilson	1052 Maple Dr IHS Int'l	599-6562	IHS	—
JOEL STOPPA	PO Box 6125 MORGANTOWN WV 26506	293-7550	WVU	—
Billie Jean Kelley	Lakeview-Rivert 1 Lakeview-Rivert Lakeview-Rivert Lakeview-Rivert PO Box 2170 CHARLESBURG, WV 26302	594-1111	Lakeview-Rivert	—
Dennis Kunkel	PO Box 852 Morgantown 26507	604-7651	UKAR Charcoal	✓
Tim Strunk	PO Box 388 Fairmont WV	292 8443	Morgantown Utility Board	—
Ron Wilson	417 Linden St. MORGANTOWN WV	367-1822	J & J Drywall	—
Ken Downey	PO Box 4300 Morgantown WV 26505	296-3529	Downey Contracting Downey Distributing	—
Stephanie Lasky		296-1783	MT. State Bit Service	—

85 C.S.R. 9 "Risk Management Rule"

Public Hearing: September 19, 1996, Morgantown, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment Yes No
Alicia Savender	Maloney & Co. CPAs P.O. Box 520 Kingwood, WV 26537	304-329-2752	Maloney & Co.	X
Tammy Jeffries			" "	X
Brenda Keckley	457 So. Mineral St. Keyser, WV 26726	304-789-3569	The Tax Shelter	X
Deborah Jessie				
JUNE BOWMAN	R2 Turner Hwy 26444 Appalachian Wildlife P.O. Box 100 Kearlesville, WV 26685	568-2672	A-T-S Snack Bar	X
Susan Lamey	Appalachian Wildlife P.O. Box 100 Kearlesville, WV 26685	304-454-2475	Appalachian Wildlife	X
Curt Hassler	APPALACHIAN HARDWOOD CTR. WVA	304-293-7550	WVA	X
Steve Gande	P.O. Box 128 Clarksburg, WV	304-622-5022	Robinson & Elmer	X
Shelia Tennant	Box 10 FAIRMONT	304-367-1098	Sobranina, Inc. SOUP OPERA	X
CARL AKKIRE	PENNS BORO, WV 26415 ONE COCHRANE AVE	304-659-2903	SIMONTON WINDOWS	X
Marquisele Gabrielle	Van Voorhis Rd Morgantown WV	304 597-4800	March-Westin	

85 C.S.R. 9 "Risk Management Rule"

Public Hearing: September 19, 1996, Morgantown, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment Yes No
Beverly J. Keener	326 Rolling Hills Village Morgantown	(304) 599-2733	Mid-Atlantic Retrieval Concepts, Inc.	
Deanna J. Watts	P.O. Box 6640, Morgantown 26506-6640	(304) 293-5480	West Virginia University	
Suz Robin	440 Virginia St. Rm 204 Morgantown	304-588-2209	Reger Housing Auth	
Dulvi Miller	927 Coleman Ave East Hardy Co. Bd. of Educ	304-363-2050	W. G. Thomas Transfer	
Romaine Landes	510 Ashby St. Petersburg, W.V.	304-538-2348	Hardy Co. Bd. of Educ.	
Abbe Evans	204 Jefferson Ave. Morgantown	304-257-1011	Chart Co. Bd of Ed.	
Sheila Secorro	1200 J.D. Anderson P.O. Box 2156 Fairmont, WV	598-1412	Mon General Hosp.	
Leslie Clark	P.O. Box 157 Glenwood, WV 26574	304-363-2442	Enviro Con Ltd.	
Jay Temple	1345 Locust Ave Fairmont	304-278-6116	American Bituminous	
Sharon (John)	1345 Locust Ave Fairmont	366-2050	S.K. Wang, M.D.	✓
Sharon Wang	1345 Locust Ave Fairmont	366-2050	S.K. Wang, M.D.	✓

85 C. S. R. 9

"RISK MANAGEMENT RULE"

PUBLIC HEARING

DATE: SEPTEMBER 9, 1996

LOCATION: DANIELS, W. VA.

<u>NAME</u>	<u>REPRESENTING</u>	<u>ORAL COMMENT</u>	
		<u>YES</u>	<u>NO</u>
Cheryl Amick	Nicholas Co. Health Dept		
Carla F Dorsey	Nich/ Webster. Co. Home Health		✓
DICK JOHNSON	RITCHIE EQUIPMENT, INC.		✓
Debbie Christian	Columbia Raleigh General Hospital		✓
W.S. Talbot	Greenbrier Motor Co		✓
	Colonial Feard.		✓
Bill DeBord	DeStines Supermarket		✓
Bob Whit	" "		✓
Penny Jones	Vecellio & Grogan		✓
Ann Haskins	TWIN STAR Mining / Premium Energy		✓
	+ White Flame Energy		✓
Eladene Pickle	Sophia Methodist Church		✓
GARY NEWBERRY	PITTSBURGH COAL CO.		✓
Reggie Wood	Consulting & Coal Services, Inc.		✓
Orla Blankenship	Custom Mfging Services		✓
John Mahood	Brown, Edwards & Co		✓
John Gibbey	Marcor County Airport		✓
GA Smith	Princeton Health Care Center		✓

85 C. S. R. 9 "Risk Management Rule"

Public Hearing: September 9, 1996, Daniels W. VA.

<u>NAME</u>	<u>REPRESENTING</u>	<u>ORAL COMMENT</u>	
Virginia L. Reinkopf	Mountain State Truck, Inc.	<u>YES</u>	<u>NO</u> ✓
DAVID L. NALKER	"		✓
Teresa Cogan	C & E Corporation		✓
Sue Patterson	Cline Resource + Development		✓
Juice Mills	Mills - Ringer Bookkeeping, Inc.		✓
Amy K. Holt	" " "		✓
Helen B. Lambert	Lambert Enters		✓
Karna Comer	Andy Clark Ford		
Andrew L. Clark	Andy Clark Ford		
Andrew L. Clark Jr.	Andy Clark Ford		
Helen Collins	Blackhawk Construction		✓
JILL NOBLE	PERSONNEL MGT		✓
Betty Gray	Top Notch Custodial Care		
Mike Robinson	Autumn Way PC		
DAVID HANCOCKSON	Summersville Memorial Hospital		✓
Charles S. Weatherford	FMRS Mental Health Council		✓
Guy H. Hensley Jr	FMRS MH Co. Inc		✓
Sandy Sabinske	Bluestone Electric, Inc.		✓
Pamela Parker	Downard Hydraulics Inc		✓
Kathy Scott	Council of the Southern Mountains		
BRIAN PATE	Beckley Fed Savings Bank		
NEIL LAMB	EAGLE CARBON Inc		

85 C. S. R. 9 "Risk Management Rule"

Public Hearing: September 9, 1996, Daniels W. VA.

<u>NAME</u>	<u>REPRESENTING</u>	<u>ORAL COMMENT</u>	
		<u>YES</u>	<u>NO</u>
Jerry E. Berry	Demo + Sales, Inc. Bonaire, GA Lane Trucking Co. Beech Mountain Timber, Inc Beech Valley, Inc Hinton, WV		✓
Kathi Farrish	Beckley-Ral. Co. Bd of Health 1602 Harper Rd Beckley, WV 25801		✓
Bobby McDowell	McDowell Logging McDowell Trucking Inc		✓
CAROLYN NEAL Darlene Huttman	Princeton Community Hosp. PO Box 1369 Princeton WV 24740		
Joe Dookins	Dookins Enterprises		✓
John Hodges	National Federation of Independent Business ✓ + Hodges + Associates.		
Christina Bright	NFIB + Hodges + Associates		
Elmer Fike	Fike Enterprises ✓ NFIB Member		

85 C.S.R. 9

"Risk Management Rule"

Public Hearing

DATE: September 12, 1996

Location: Barboursville, WV

Name	Address	Tele. No.	Company	Oral Comment Yes No
Joseph Gresham	801 Main Ave. Martinsburg, WV 25143	(304) 755-4308	IAM & AW Local 656	X
MICHAEL L. RODES	2400 S. Act. Huntington, WV 25702	304 528-02327	RASF	
Debi Stowers	200 Kanawha Blvd E Charleston, WV 25301	304 353-7230	CASCI	X
Nancy Klim	P.O. Box 3089	7363416	D4E	X
Conrad Bouwers	181 Monterey Drive	727-6579	Bureau of Employment	X
Beryl Hanson	401 1/2 Street	525-0531	American Benefit Corp.	X
Russ Houch	800 5th and Huntington 25704 P.O. Box 1060	482 5572	City of Huntington	X
Toni Weber	Huntington 25713-1060	523-6464	Hess, Stewart & Campbell	X
Gerald Porter	P.O. Box 880 Barboursville, WV 25504	736-8933	SNC Electrical Products, Inc.	X

85 C.S.R. 9 "Risk Management Rule"

Public Hearing: September 12, 1996, Barboursville, West Virginia

Name	Address	Tele. No.	Company	Oral Comment Yes No
JAMES METZ	WASHINGTON WV	538-2330	BASF	
Stephanie Sample			ESC	
Marvin King	1108 N. Oakway Ave. Martinsburg, WV	736-1175	WV GOV. AEA	
Mark Baylson	PO Box 525 HTZ	523-5178	WUAWC	✓
Tom Buecham	525-28th St. HTZ	522-6160	MASTER MEDICAL INSUL.	✓
Paul Riedel	Box 9067 Martinsburg, WV	523-5452	Riedel - WILKS	
Darrell Spurbel	667 Central Ave Martinsburg, WV	733-2799	Gavin, Inc.	
Glenn R. R. R.	6065 Lyke Lane Martinsburg, WV	733-1485	AICAN	
Dominic Dapto	2440 Elm St. Martinsburg, WV	525-4445	HPT	
Ken Burr	17 E. Commerce Martinsburg, WV	525-5131	Chamber of Commerce	X

85 C.S.R. 9 "Risk Management Rule"

Public Hearing: September 12, 1996, Barboursville, West Virginia

Name	Address	Tele. No.	Company	Oral Comment Yes No
Jim EBARB	ELEANORS WV P.O. Box 39	586-1070	AL JOHNSON - MASSMAN	
Brian Hinkle	Eleanors, WV P.O. Box 39	586-1070	AL Johnson - Massman	
HOWARD ULLOM	5869 ALT BIRD BLVD.	736-9955	ULLOM BEAUTY BNL	
Rebecca Wells	1340 Hal Green Blvd.	226-2063	Cauley Huntington Hospital	
Dorothy Mors	7 Citetrace Ct	525-6070	LAWN MEDIC. & HORTICULTURE	
Stephanie Wingate	P.O. Box 3105 Htn	525-7200	Nichols & Wright Farming, Inc.	
CHARLOTTE Brawley	6900 West Country Club Drive Htn. WV 25705	733-1060	HEALTH SOUTH Rehab Hospital	
Ashell Bevel	P.O. Box 386 Milton, WV 25541 6065 KYLE LANE	743-9067	supervacu	
CHARLES E. WHITE	MONTGOMERY, WV 25702-9799	733-1475	ALCON SURGICAL	
Denise Reynolds	2240 5th Ave.	525-4445	HPT	

85 C.S.R. 9 "Risk Management Rule"

Public Hearing: September 12, 1996, Barboursville, West Virginia

Name	Address	Tele. No.	Company	Oral Comment Yes No
William Hintz	416 12th St., Dunbar	768-1673	E + M Products, Inc.	
Robert K. Tomblin	2182 Rt 75, Kenova	453-3877	CARDINAL Compression Inc	
Linda Tomblin	2182 Rt. 75, Kenova	453-3877	Cardinal Compression	
Paul Ayers	FSC		FSC	
Karen Weatherholt	P.O. Box 40 ONA	743-4775	H+W Trucking Co	
Anna Mangum	HURRICANE WV 453-2308	752-7545	Mangum & Const.	
John M.H. Bayliss Jr	P.O. Box 503 DUNBAR	7446317	BAYLISS & KANEY	
JASON DAVISON	P.O. Box 1120 GERRYVA VA 24644	5409357592	Northland Resources LLC	
Sonya Phillip's	Rt #2 N. + Kyle Lane Huntington, WV	736-3416	D+E INDUSTRIES	
Maurice About	2575 Virginia Ave Hurricane, WV 25526	722-2981	Standard Food	Yes
Orville L. Shaw	P.O. Box 9007 Huntington, WV 25704	429-1311	Charles' Pharmacy	
Damon P. Griffith	1340 Hal Greer Blvd Huntington, WV 25701	526-2167	Cabell Huntington Hospital	

85 C.S.R. 9 "Risk Management Rule"

Public Hearing: September 12, 1996, Barboursville, West Virginia

Name	Address	Tele. No.	Company	Oral Comment Yes No
Leroy Caruth	HUNTINGTON PO BOX 2466	333844	151 C.V. 125	
RICK HIGGINS	CHAS. WV 25329	357-4526	Geo. Friedlander	
Sammie Lippert	PO BOX 20 HUNTINGTON 25727	458-1009	Waterloo Farm	
K. Winters	3000 Riverside Dr. Huntington, WV 25701	526-5578	Inco Alloys	
Shirley Stagg	Valley & Assoc 210 W. 10th St Huntington, WV 25801	752-1272	Valley & Assoc.	
Gene Stoeck	"	752-1272	Valley & Assoc	
Goni Bittu	5200 Rt 60 E. Hgt. WV	736-5291	Marathon Network	
Frank Shutes	401-11th Street #30 Monticott Ct Hgt. WV	525-0331	American Bank Corp	
Vickie Hunter	"	526-4436	Huntington Housing	
Shirley Nicholas	#30 Northcott Ct	526-4436	Huntington Housing	
T. Carnall	PO Box 3445 3rd ave HUNTINGTON WV 25801	529-4135	Quintessence Glass Supply	
Delbert Antrop	Barboursville WV	736-9131	Eastern Masonry	

85 C.S.R. 9 "Risk Management Rule"

Public Hearing: September 12, 1996, Barboursville, West Virginia

Name	Address	Tele. No.	Company	Oral Comment Yes No
David Slotz			Gates McDonald	✓
Conni Black	P.O. Box 8067 Htgn WV 25705	697-4271	Childrens Conext.	✓
Earl Jenkins	125 Richmond Rd 4428 Earl St Htgn WV 25705	523-065	WV Legis. Serv.	
Gaynell Smith Myers	1100 Washington Huntington, WV 25704	697-1141 529-2301	Jordan-Smith Elec. Dutch Miller	✓
MAK MILLER	11 P.O. Box 2832	529-2301	CI	✓
ROBERT STATEN	HUNTINGTON, WV 25705	743-4518	CONVEYOR MFG. & SUPPLY, INC.	✓
Maria Hager	1 Hillcrest Dr. Scott Depot P.O. Box	757-7428	Hager Homebuilding	
Patrick J. Woodard	Htgn. WV, 25722	522-9100	FACER, FARELL, & FARELL, LLC	✓

85 C. S. R. 9

"RISK MANAGEMENT RULE"

PUBLIC HEARING

DATE: SEPTEMBER 10, 1996

LOCATION: PARKERSBURG, W. VA.

<u>NAME</u>	<u>REPRESENTING</u>	<u>ORAL COMMENT</u>	
		<u>YES</u>	<u>NO</u>
Shirley Rygiel	Simakas Co. Inc.		
Lyle Fisher	Simakas Co. Inc.		
Cleo Browne	Revco Drug Stores		
John R. "Shorty" Bungardner	Ritchie Co. Comm.		
CARLA SENDING	R.I.S.		
Linda DeBuck	R.I.S.		
Flourance E. Bonner	Ritchie Co. Integrated Family Ser.		
Lee Weaver	YWCA of Parkersburg		
Carol Myers	GATEWOOD PRODUCTS		
Amey Murray	Murray Sheet Metal		
TOWN WHISTLER	ENGLANDER BEDDING Co.		
Don Whitley	B.D. Fabricating & Trailer Repair.		
Jim Asbury	Arrow Industries		
Betty Harts	E.G. Parson Contracting		
Warren Perkins	W.Va. Safety Council		
Vanessa Kelle	Danser, Inc.		
Jan Cooper	Ames Co.		
Alvin Ewigke	Creston Company		

85 C. S. R. 9 "Risk Management Rule"

Public Hearing: September 10, 1996, Parkersburg, W. VA.

<u>NAME</u>	<u>REPRESENTING</u>	<u>ORAL COMMENT</u>
		<u>YES</u>
		<u>NO</u>
Patricia A. Stewart	Wood Co. Senior Citizens	
Donna Hogg	Donna Morris's	
Angela Summers	Mr. T E	
Alice Taylor	Harold's Refuse	
	Wood Co. Waste	
Don Merce	Shippard Healthcare Inc.	
	Ritchie Co.	
Becky Adams	Emp. Service Corp	
Mike Solomon	E S C	
Marilyn Morris	Woodcraft Supply / SBR	
CRAIG RABATIN	DAVIS PICKERING	
Ginney Mitchell	J & M Builders	
Sharon Wickhamer	Woodridge Personal Care Home	
D. R. Wells	D R Wells & Son	
David Slater	Gates McDonald	
Jean E. Karen Herman	Charter Management, Inc.	
Jeanette J. White	Herman Thompson Maltby & Ice	
FRED CHASE	DUS HYDRO	
Sharon Lynch	Candler Clark Memorial Hospital	
De Etta Muscati		
Laura R. Pifer	Pifer's Service Center	

85 C. S. R. 9 "Risk Management Rule"

Public Hearing: September 10, 1996, Parkersburg, W. VA.

<u>NAME</u>	<u>REPRESENTING</u>	<u>ORAL COMMENT</u>	
		<u>YES</u>	<u>NO</u>
Randy Rapp	Rapp Chevron		
Karen Caltrider	Harman, Thompson, Mallory & Lee PC	?	
Bill Inul	Forest Hill Associates		✓
Jacie Lsadecky	Hartley OIL Comp.		✓
Jarkin Scott	St. Joseph's Hosp		✓
Lyle Knapp			✓
Jim Andrew	PRC APPROBIS		✓
Kenneth Downie	Rooters L4 #42	?	
Dr.			
Glenn D. Bailey	Bailey General Contracting		✓
Dave Doering	DUPONT		✓

85 C. S. R. 9 "Risk Management Rule"

Public Hearing: September 10, 1996, Parkersburg, W. VA.

<u>NAME</u>	<u>REPRESENTING</u>	<u>ORAL COMMENT</u>
Matt Basgraf	Meredith Manor	<u>YES</u> <u>NO</u>
Susan J. Scott	Ritchie Co. Clerk's Office	X
K. R. Davis	IRS Hydro Inc.	X
Mikki Bosley	J.C. Bosley Const. Inc.	X
Lisa Smith	"Mills Motor Co"	X
Kathy Fleming	"Mills Motor Co"	X
Beth Foster	The Perra People Inc.	X
Sidney Brackenridge	Mills Motor Co	X
Charles Cranch		
Joan Atman	Self	V
Randy Hatter	Self	X
Babette Robinson	Frank Gates Service	X

85 C. S. R. 9 "Risk Management Rule"

Public Hearing: September 10, 1996, Parkersburg, W. VA.

<u>NAME</u>	<u>REPRESENTING</u>	<u>ORAL COMMENT</u>	
Eugene Vermont	Previous WEDD Assoc	<u>YES</u>	<u>NO</u>
Jane McMurray	McClinton Chevrolet		✓
Adele Teets	Larner Thompson		✓
Eschen Wilson	" "		✓
Paul Zimm	Ammon Alloy		✓
(Charlotte) Boyth	Cauden Clark Hospital		✓
David Hutton	The Parkersburg Sentinel		✓
Loren Bradley	W.E.B. Mgmt.		
Janet L. Leasure	Ray Leasure, Inc.		✓
James Taylor	Bayer Corp		✓
Linda B. Maze	Ritchie County Clerk		✓

85 C.S.R. 9

"Risk Management Rule"

Public Hearing

DATE: September 27, 1996

Location: Charleston, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment Yes No
Charles Royle	Columbus St Route 52, no	614-777-3154	Gentry m c Gentry	✓
BONNIE GOFORTH	BLUESFIELD, WV Clay Co Bd of Ed	304-327-3561	Flowers Baking Co.	✓
Loretta Gray	Box 120, Clay 101 CARRAGE WAY	587-4266	Clay Co Bd of Ed	✓
BRENT A. BURNS	SUITE 300, HERRING WY 25524	757-1022	BUELL ENTERPRISES, INC	✓
Carmen Ma Lom	206 Court St, Madison WV 25130	304-97303	Brown Co Community	✓
Wayne Guller	2660 Main St. HARRINGTON 419 Brooks St, Charleston	562-244	T-S.I.	✓
Scot Mitchell		348-3072	Partners in Health	✓
HOWARD ORRIS	340 4th Ave, HARRY TOWN WV	523-3151	Digest River Properties	✓
GARY NEWBERRY	PO BOX 5700 Lebanon VA	540 8896000	PITTSBURG COAL	✓

85 C.S.R. 9 "Risk Management Rule"

Public Hearing: September 27, 1996, Charleston, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment Yes No
Florence Washington	Chas. WV	342-1020	CORA	✓
Linda Klotzbach	Box 36 Clay 25043 Appalachian OH. 9	581-4269	Clay/Vaultte Dept.	✓
Marie Walker	RT 2 Box 382 Bluefield	325-3621	Appalachian OH 9	✓
Melissa Myles	HC 37 Box 265 B Lewisburg WV 24901	689-3534	Services Acct.	✓
Jerry Roberts	P.O. Box 6 Kenick, WV 24944	497-2023	J & E Logging Inc	✓
FRAD ST. JOHN	P.O. Box 1740 Princeton WV 24740	425-5173	TRVE Energy Com SHEL, Inc	✓
Peggy Robertson	P.O. Box 586 Hurricane WV 25526	562-2401	TSI	✓
Blacky Chandler	P.O. Box 1988 Clay WV 25327	343-4188	Chambers Paterno Hanson	✓
Dwayne Chris	Charleston WV	345-1324	Personnel Management Co	✓
NICK SAMCO	500 Orange ST. 24701 JULY 1996	327-1718	Bullfinch Research also COR	✓
MIKE MCGUFFIN	2300 3rd Ave Hts W.V. 25703	529 3211	ACF Ind Inc	✓

85 C.S.R. 9 "Risk Management Rule"

Public Hearing: September 27, 1996, Charleston, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment Yes No
Pamela Minimach	612 Virginia St. E.	343-1130	All-Aid Services, Inc.	✓
Mike Solomon			ESC	✓
Bobbie Pauling			ESC	✓
Becky Adams			ESC	✓
Ralph L Walker	50 Harvest Ln.	744-6373	Cammins	✓
Nicholas Cavender			Acordia	✓
Mark Clark			11	✓
Roberta Richmond	210 Hale St.	345-7122	Black Diamond Girl Scouts	✓
Coffey Mullis	1021 Garrison St		FMC	✓
Virginia King		755-8271	Kanawha Stone Co.	
Max A. Teare	P.O. Box 497, Seward	854-1898	Eck Ron Can Co.	

85 C.S.R. 9 "Risk Management Rule"

Public Hearing: September 27, 1996, Charleston, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment Yes No
Randy HERDMAN	P.O. Box 39	586-1076	AL JOHNSON - MASSMAN	✓
Joe Hill	P.O. Box 132 Conewet	647-5150	B.A. Mulligan Lumber	✓
Fred Jensen	P.O. Box 2028 Char	343-4158	WV Auto Dealers	✓
David Mount	520 16th ST Dunbar, W. Va. P.O. Box 454	764-6201	Stanley Steemer	✓
KAY WILKIND	ST. MARYS, WV	304-684-2391	SHADONEE EXCAVATING	✓
Scarlett Satterfield	"	"	"	✓
Deana Danilov	"	"	"	✓
Connie BEARE	HC 83 Box 19 Sissonville, WV 25320	304-988-0657	Liberty Mutual Ins	✓
TRINA S. SPARKS	P.O. Box 1678 Bluefield, WV 26011	304-325-2544	INSURANCE PROS	✓
Margaret Kilgore	4136 W. Wash. ST. Charleston, W. Va. 25313	304-744-5613	Communication Serv.	✓
Tom Wetzel			Walker Corp	✓

85 C.S.R. 9 "Risk Management Rule"

Public Hearing: September 27, 1996, Charleston, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment Yes No
Ken Black	Mountgomery	442-4862	CCI	✓
Sam Davis	Cates McDonald	343-3913		✓
Gindy Lewis	64 W. 6th Ave Huntington	523-3497	Cammack Childs	✓
Pat Dent	206 Court St. Mason	361-7301	Boone & Co. Inc.	✓
Bill Geary	405 C-p. St. Sully	345-1772	Baker & Geary	
Randi Dick	P.O. Box 5100 Lebanon	(540) 887-6107	P. H. Eaton	✓
James Thoms	510 C. St. So. Ches	744-4940	Speci-Touch Nursing	
Walter Ballentine	3 Carol Dr. Hurricane	752-9823	Warless Trucking	✓
Joe Kelley	Whispering Will Estab	956-1134	ELC	✓
Tom Brazee	Box 808	925-6633	CT&E	
Scott Withrow	P.O. Box 569, Poca	755-8321	KSS	✓

Public Hearing: September 27, 1996, Charleston, W. Va.

[illegible]

Public Hearing: September 27, 1996, Charleston, W. Va.

[illegible]

85 C.S.R. 9 "Risk Management Rule"

Public Hearing: September 27, 1996, Charleston, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment Yes No
Lefine Wilson	Gates M'Donald			
Kayla Shamblin	Advanced Home Health Care Inc.			✓
MARCIN SanFilippo	YUCA			
CHARLES MARYO	"			✓
Lisa Bowens	PO Box 204 Wayne, WV	(304) 272-5112	Wayne Co Comm Service Org., Inc.	✓
Sherry Hundley	P.O. Box 204, Kimberly, WV	442-2105 25118	Armstrong Creek Machine	
Don J. Enig	Box 338 Duncannon, WV	780 4-732-5224	US Steel	✓
Gardner M. Stultz	Center P.O. Box 425, N. Ia.	755-8171	Concor P. Inc	✓
William D. ABRAMAN	PO BOX 157 CORA WV 25614	239-2074 x15	FALON Equip Co.	✓
Andrew Marlow	421 VIRGINIA ST Charleston 25302	343-0323	Health foods	✓
Michael Kawash	600 Virginia Center 500 Virginia St. E	344-5800	Robinson & McElwee	✓

85 C.S.R. 9 "Risk Management Rule"

Public Hearing: September 27, 1996, Charleston, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment Yes No
Keith H. Campbell	421 scott St Bldg WV	327-9876	Morgan County Fellowship's Home	✓
Judy K. Murphy	4237 STATE RT 34 HURRICANE, WV 25526	757-2541	Putnam Co. HEALTH DEPT.	✓
Bo Williams		343-3913	Gates Mc Donald	✓
Russ Hockett		"	"	✓
David Slater	Gates McDonald			✓
Pat Rudelle	P.O. Box 757	755 8111	Jeffers Corp	
Ann Schoenlecraft	St Albans WV 25177	"	Jeffers Corp.	
Tom Bunde	Kimberly WV		W Forge & Columbia	
Mark Gungl	Huntington 304	522-3830	Huntington Garrison	✓
JOAN O'Guinn	Rt 4 Box 314 PMT. LOOKOUT WV 26678	304 8721367	Workledge Const	✓
Carol Mc Huff	175 Jarp. Rd. 1245 Proctorville, OH.	304 555-8014	Quinn Services	
	45669		Center	

85 C.S.R. 9 "Risk Management Rule"

Public Hearing: September 27, 1996, Charleston, W. Va.

Please Print:

Name	Address	Tele No.	Company	Oral Comment Yes No
Cindy Darot	Belknap 2510B 2000 River East Drive	926-1240	Benefit Services, Inc.	
Alice Yearago	Bridgeport 2400 Aviation Hwy P.O. Box 101	842-6300	WVAir Centre	
Lisa Schwendeman	113 Quincey St 120 W. 3rd St.	465-5525	URI	
Jack Hales	Huntington, WV	523-3766	Century Lubricants	X
Doug Harrah	4324 Treas. Building SCO & Dept. W 26520	757-0543	ICS	
Joe Schore	1426 Mt. Vernon Rd Chas. 25314	344-1287	Jacob + Co.	
Bill Courtney	200 Elizabeth St	348-6657	Kan Co BGE	
George Cram	701 W. Main St. Riley	372-9122	Best Western	
TIM McFARLAN	1600 LADLEY Tower	340-1000	Jackson & Kelly	
Lisa Dooley	1620 Kan. Blvd E Chas	342-5564	WV M U	X
Tim Allman	1240 P.O. Box 4106 Chas WV 25361	925-0342	WV State Med Assn	A

Public Hearing: September 27, 1996, Charleston, W. Va.

[illegible]

85 C.S.R. 9 "Risk Management Rule"
Public Hearing: September 27, 1996, Charleston, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment Yes No
Bonnie Harold	400 Allen Dr. Charleston 25302	342-2450	Builders Supply Assoc. of WV	✓
Lucile Foster	Bu 2629 Charleston, WV 25329	346-0441	Arnold & Foster	✓
Mary Belcher	1325 B/H Ave Blairstown WV	325-8146	Sawpe Co.	✓
Carrie M. Corn	P.O. Box 7028, Kenosha WV	776-6660	Stagg Engineering	✓
JOAN HODGES	109 ELIZABETH ST. CHARLESTON	345-4535	NATIONAL FED. OF IND BUS	✓
Jan Vineyard	410 W. Hwy. S.E. #306 Charleston	343-5500	Jim's 64 WV	✓
Judy King	City Hall Chas WV	348-8015	City of Charleston	✓
Donna				
Lisa Crum	Mate Creek Trucking Matewan, WV 25678	800 972 2262		

85 C.S.R. 9 "Risk Management Rule"

Public Hearing: September 27, 1996, Charleston, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment	
				Yes	No
Jo Carol Smith	Box 67, Dawses, WV	438-7776	SSF Construction, Inc.		✓
Christi Fitzpatrick	Camelton Inc	348-0514	Camelton		✓
Stanley P. Graham Sr. / W.F. Richmond	5100 507 D St. So. Lanes 121 Second St Beckley	744-4513	CAA		✓
Bud Shuman	Chas. 2136- P.O. Box 620	342-5176	" "		✓
Charlene Eskew	P.O. Box 9367, So. Chas,	766-8062 WV 25309	Ahern + Associates, Inc.		✓
Brenda Graham	705 South Park Road	925-0366	Union Mission		✓
Corlis + Barbara Ferguson	Rte 1304 2520 Albans St	727-9613	Ferguson Family Trucking		✓
Stan VANDERSONG HORN	700 ELIZABETH ST. WV. WILLIAMSTON	375-6122	FENTON ART GLASS		✓
Candra D Ingram	P.O. Box 2831 Chas, WV 26020	767-6281	Phone-Poulsen		✓
Richards Brewer	P.O. Box 1273 Chas, WV	357-2739	Columbia Gas Trans		✓

Public Hearing: September 27, 1996, Charleston, W. Va.

[illegible]

Public Hearing: September 27, 1996, Charleston, W. Va.

[illegible]

85 C.S.R. 9

"Risk Management Rule"

Public Hearing

DATE: September 26, 1996

Location: Elkins, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment Yes No
Carole Miller	Rt 1, Box 6 Kearnsdale, WV	304-364- 8730	Business Assistance De Miller Enterprises	
Helen Cottrell	Rt. 1 Box 10-B Kearnsdale, WV 26636	304-364-2442	Cottrell Logging Co.	
Dominic Cappin	3134 Main Weirton, WV 26062	304-748-7833	New Concepts Company, Inc	
Martha Sautley	223 N. Potomac St.	301-733-7330	Hagerstown Goodwill Industries	X
Charles R Baylor	1011 US HIGHWAY 29 BRIDGEWATER, W. Suite 201 PO Box 39	908 704 8880	Hydro Group Inc	
Jeff Price	Slity Fork WV 26251 PO Box 72	304 572-1220	Beckwith Lumber Co.	X
Paula Tanner	Webster Springs WV 26288 HC 65 Box 333	304 847-5401	Cool Motors Inc.	
Rose Helmick	MOOREFIELD WV 26836 2119 FAIRMONT AVE	304 257-2119	Advantage Foods LLC	
Rick Williams	FAIRMONT, WV	304 366 3739	NCWV B-1110102 TRADERS	✓

Public Hearing: September 26, 1996, Elkins, W. Va.

[illegible]

85 C.S.R. 9 "Risk Management Rule"

Public Hearing: September 26, 1996, Elkins, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment Yes No
Susan Butcher	Elkins Mt. School 100 Bell Street, Elkins, WV	686-6667	Elkins Mt. School	✓
Beverly Jackson	"	"	"	
Cindy Hinkle	Appalachian Forest Products	472-2996	Buckhannon WV	✓
Carol Haddix	RT-5 Box 556 Buck	472-6035	Jackson Fire	✓
Jim Shaver	143 Cottage Ave Clarksburg	269-9837	Corvel	
Peg Collette	Salem - Teikyo Univ Clarkston	682-1042	College	✓
Beth Clewanger	Box 1400, Box 98 Thomas, WV	463-4181	Cortland Acres Nursing Home	✓
Nancy Oliver	Elkins, WV	636-8800	Elkins Radio Corp	✓
Jim Janger	PO Box 1484 Elkins	636-3174	Davis Memorial Hosp	✓

Public Hearing: September 26, 1996, Elkins, W. Va.

[illegible]

85 C.S.R. 9 “Risk Management Rule”
Public Hearing: September 26, 1996, Elkins, W. Va.

Public Hearing: September 26, 1996, Elkins, W. Va.

Please Print:

[illegible]

85 C.S.R. 9 "Risk Management Rule"

Public Hearing: September 26, 1996, Elkins, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment Yes No
Debbie Warnick	Amalie Dr, Buckhannon	473-2168	St. Joseph's Hosp	
JAMES GONZALEZ	PO BOX 1307 ELKINS 26241	636-3456	ELKINS IRON & METAL	
Donna St Clair	1200 JD Anderson DR Morgantown WV PO Box 644	304 598-1562	Monongalia General Hospital	
Jeanne Anderson	Washburn WV 26452	304-269-7000	Ryan's Motor Lodge, Inc also Comfort Inn?	
Margaret E. Kelley	Allegheny Wheeling Services	304-269-2500	PO Box 506 Weston WV 26301	
Richard B. Under	Acordia P.O. Box 2488 Elkinsburg P.O. Box 483	804-623-3721	Acordia	
Linda May	Shanklin, WV 26807	304-358-7535	Govt of Shanklin	
Terry Miller	PO Box 500 Salem, WV 26426	304-782-5287	Salem-Tripkay Univ	
John T. Markovch	125 CARRINGTON BRIDGEPORT WV	304-592-1483	WV & Poed	

Public Hearing: September 26, 1996, Elkins, W. Va.

Name	Address	Tele. No.	Company	Oral Comment Yes No
Connie Cutright	Buckhamton RR Box 480	473-4219	Upshur County Public Library (Press)	X
JIM BRANGAN	INTER-MOUNTAIN SBO PEACED AVE 112 Howard St	636-2124	The Inter-Mountain	
Kathy Hart	Belington WV 26250	823-1717	Louis K Wilson CPA	
John Hardin	P.O. Bx 160 Beverly WV	338-4100	Bruce Handwood Floors	
Tim R West	600 Grant St Pittsburg PA	(H12) 433-4645	H.S. Steel Mining	
Margaret Brown	Jack's Sign Inc	304-269-1647	P.O. Box 409 Winstonville	
Dord A Zennaro	702 N. Main, Weston 26287	304-269-2776	Weston Transfer, Inc	
Bob Mays	PO Box 386, Parsons	304-478-2500	Hinchcliff Lumber Co.	

85 C.S.R. 9 "Risk Management Rule"
Public Hearing: September 26, 1996, Elkins, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment Yes No
BOBBY PAULEY			ESC	X
Mike Holloman			ESC	X
Don Simule	971 Harrison Ave	636 9450	Youth Health Service	X
SAM LEGG	1101 Beverly Pike Elkins	636-7734	Sam Legg Associates	✓
JOHN YSAGER	RT 1 BOX 309A ELKINS	636-2081	Morgan Lumber	✓
Monika Weldon	235 N River	269 2269	Harris & Company	
Carlyle & Branden	P.O. Box 732 Buckhannon WV	472-1928	Branden & Company	
Grace Roy	P.O. Box 188, Elkins	636-1391	ERCC	X
Carolyn McDonald	235 N. River, Weston	269-2269	Harris & Company	X
ROSEANN MARSHALL	P.O. Box 1544	636-1600	Mountaineer Motors	X
D. Todd Bowers			Wilson Quality Millwork, Inc	X
Elaine Douglas	P.O. Box 1277 - Elkins, WV	636-3000	Frank E. Wilson Lumber Co. Inc.	X

85 C.S.R. 9 "Risk Management Rule"

Public Hearing: September 26, 1996, Elkins, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment Yes No
Wanda Moody	Weston	269-2332	Alkan Labels	
Dale Thorne	"	"	"	
Ashley Painter	Valley Bend, WV	338-4393	Scott's Auto Sales	
PAT Frey	Box 207 Valga, WV 26238	457-5735	Century Vokas P&D	
Sharon Rockwell	Elkins, WV 26241	636-4747	COA Randolph Co. Sen. Ctr.	
"	"	636-8890	Investigative	
Bair Taylor	725 Yokum Street Elkins, WV 26241	636-3232	Appalachian Community Health Center	X
Linda Wilmoth	" " "	"	"	X
Chris Go	Box 6 Elkins WV 26241	636-2071	Mongelo Lumber	X
Belinda Toms	P.O. Box 74 Huttonsville, WV	335-2488	Tyrand Coop. Ministries	
JOHN JENKINS	71 W MAIN Buckhannon	472-1700	JENKINS 120RD	

85 C.S.R. 9 "Risk Management Rule"

Public Hearing: September 26, 1996, Elkins, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment Yes No
Keith Boygs	BRIDGESPORT, WV 26330 PO Box 1310 PO Box 460	842-8229	City of Bridgeport	✓
Dave Lewis	Philipps, WV 26416 PO Box 460	457-3700	City of Philipps	✓
Speak Maerlin	40 1 st St. ELKINS	636-9150	Republic Co. Rd 1 Ed.	✓
DEBORAH K PERRI	Rt #1 Box 214 CLK'S	624-7461	EAGLE CONVEY GLASS	✓
Willa Stewart	PO. 1340 Clarksburg WV 26301	624-7461	Eagle Convey Glass	
B.J. Manning	OKS, Seneca-mall Suite 24 Elkins 26241	637-0205	WV. P.S. Rehab	✓
Quelle Fink	Journal Preparation Belington WV.	873-1717	Louis & Wilson CPA	
CHRIS BURNS	10 SMITH ST MARLINTON WV 24934	199-1227	CJ FOODS, INC.	✓
DARRELL Lilly	75 OCHARD TERR WASH, PA 15301	222-1853	U.S. Steel Mining Co.	✓
LOUISE FRIEND	P.O. Box 119 OAKLAND, MD 21550	301/334-2509	Little Sandy's Fire. Peters Feed Corp.	✓
Bill Howard-Lynch	244 Brook Avenue Morgantown, WV	304/292-7518	P+B Contracting	✓

85 C.S.R. 9 "Risk Management Rule"

Public Hearing: September 26, 1996, Elkins, W. Va.

Please Print:

Name	Address	Tele. No.	Company	Oral Comment Yes No
Lois Tracy	304-636-6110 → 1508 S. Henry Ave Elkins 26241		Mr. & A. Rhee	
Brenda Borror	102A Lee St. Petersburg, WI		Allegheny Wood	
Jim Cole	9 Dogwood "		" "	
Unita Schoonover	Rt 1 Box 173 Elkins	636-7861	Schoonover Logging	
W. Todd Jones	Elkins	676-3000	W. Todd Jones & Sons, Inc.	
Stephen Montgomery	632 EAST PIKE ST Elkins 26241	624-0682	ACT Foundation	
Balinda Robinson Mike Hindman	P.O. Box 247 Mill Creek, WI 26240	335-2050	Valley Health Care, Inc.	
Kathy Hickson	Box 194 Green Past	452-4777	Morris Ready Mix	
Nicole Wagoner	P.O. Box 430 Buckh.	478-1988	Norris + Company	
Patly Casey	235 N. River Ave Weston	269-2269	Harris + Company CPA	
Dan Mick	119 BANK ST Weston WI	269-2791	A-T & W Inc.	

TRANSCRIPT OF PROCEEDINGS

WEST VIRGINIA

**WEST VIRGINIA SECRETARY OF STATE
ADMINISTRATIVE LAW DIVISION**

**Bureau of Employment Programs
Workers Compensation Division**

ORIGINAL

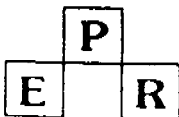
**RISK MANAGEMENT
Administration of the Workers Compensation Fund**

The Public Hearing held in the above-styled matter at the Holiday Inn, Foxcroft Avenue, Martinsburg, West Virginia, on the 3rd day of October, 1996 beginning at 9:16 a.m.

A P E A R A N C E S

Andrew Richardson, Chairman
Christopher DeAngelis
Amy Graves
Cheryl Ranson
Ed Staats
Randall Suter, Esquire

Gene Bailey
Thad Epps
Richard Humphreys
Everette Sullivan
Paul Thompson



RIGG'S REPORTING

595 Cougill Road
Middletown VA 22645-9718
(800)925-4718 (540) 869-0398

98:6 W7 81 100 96

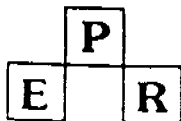
LEGAL DIVISION

I N D E X

October 3, 1996

INTRODUCTION:

Chairman	(Andy Richardson)	Page 3
Ed Staats		Page 14
Chris DeAngelis		Page 18
Amy Graves		Page 28
Cheryl Ranson		Page 38
Randall Suter		Page 58
Question and Answer Portion		Page 67
Public Comments		Page 99



1 **WEST VIRGINIA RISK MANAGEMENT RULES**

2 **WORKERS' COMPENSATION DIVISION**

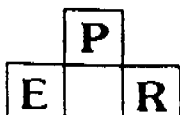
3 **PUBLIC HEARING**

4 **October 3, 1996**

5 **THE CHAIRMAN:** I want to welcome you
6 to the eighth public hearing that has been conducted
7 around the state of West Virginia and like our other
8 public hearings, I am overwhelmed at the turnout. I am
9 very pleased that so many folks have come forward this
10 morning to spend a few minutes with us as we talk about
11 changes in West Virginia's Workers' Compensation system.

12 West Virginia's Workers Comp system has gone
13 through a number of changes over the past several years,
14 and what we are here to talk about today was a central
15 part of Senate Bill 250 that was enacted by the 1995
16 Legislature. I'm sure you've heard of Senate Bill 250;
17 it's been a fairly controversial piece of legislation,
18 but this was something, this particular division was a
19 part of that bill that really had broad agreement.

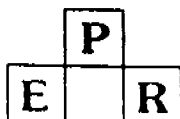
20 My name is Andy Richardson. I'm the
21 Commissioner of the West Virginia Bureau of Employment
22 Programs, and included in my responsibilities is
23 administration of West Virginia's Workers Compensation
24 system.



1 What you will hear over the next few minutes is
2 an overview about a totally new approach to handling
3 ratemaking and underwriting the workers compensation
4 insurance risk in the state of West Virginia. This
5 initiative is a part of the implementation process of the
6 changes that occurred in the West Virginia Workers
7 Compensation law in 1995, and it is being implemented
8 today by the compensation program performance council.

9 The compensation program performance council is
10 a nine member body, established by law, as a governing
11 oversight body of the workers compensation system. It
12 has four representatives in the interest of employers,
13 four representatives in the interest of workers, and
14 myself, as commissioner; I'm kind of stuck as the man in
15 the middle.

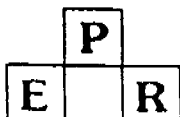
16 What I'd like to do at this time is introduce
17 the members of the council who are with us today. Now,
18 you know, we've had several of these meetings, and bear
19 with us today, we may be a little -- a little slaphappy.
20 We've done eight of these things. We can all pretty much
21 recite the script by ourselves and we might kid around;
22 but see, these guys have messed me up this morning,
23 because one of the lines I always kid about is, with all
24 the labor guys sitting together and all the business guys



1 sitting together -- I can make some joke about them being
2 to the far right or to the far left, but today I don't
3 know where they are philosophically. Now, I know where
4 they are philosophically;

5 To your far left and my far right -- and
6 probably neither is a fair characterization -- is Dick
7 Humphreys who represents the interest of employees
8 generally on the compensation program performance
9 council. Next to Dick is Paul Thompson who represents
10 the interest of workers in manufacturing industries. We
11 have two labor worker types. Then we have Big Coal, Gene
12 Bailey who represents the perspectives of coal company
13 employers. To Gene's left, probably appropriate, is Thad
14 Epps who represents the interest of manufacturing
15 employers, and to the far left, definitely appropriate,
16 is Everette Sullivan who represents the interest of
17 building trade workers.

18 Now the compensation program performance
19 council has put forth these rules for comment and the --
20 thanks -- this is the actual regulation. This is the
21 proposed law for lack of a better word, okay? This is
22 the Readers Digest version. This is the -- and this is
23 what you will follow along as the presentation is made
24 today.

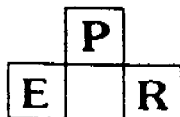


1 Now, I want to point out something on the
2 proposed regulation; right down here it says the last day
3 for written comment is October 8, 1996, at 5:00 p.m. An
4 address is provided to contact Randall Suter at the Legal
5 Services Division, P.O. Box 3922, Charleston, 25339, and
6 the telephone number. Now that date is rapidly
7 approaching and we need your input. We need your
8 comments and you have that opportunity today.

9 You have two particular parts of this mornings
10 activity. First will be a presentation by our staff, the
11 Workers Compensation Division on this plan, and there
12 will be a question and answer period, although having now
13 done this several times, we will anticipate your question
14 and respond to them and then open it up for questions.
15 Okay? Because we have found that we were hearing the
16 same kind of questions at other meetings.

17 Then we will open this up for a public hearing
18 where you may formally step forward, state your name,
19 your affiliation, and provide any oral comments at this
20 time that you would like to make. Now, after the meeting
21 today, we want you to complete this evaluation form and
22 give us a little bit of customer feedback.

23 MR. BAILEY: Pam Brandenburg has an
24 emergency phone call. Pam Brandenburg.



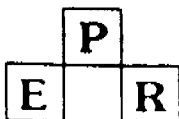
1 **THE CHAIRMAN:** Pam Bradenberg. Okay.

2 We want customer feedback, so please take the time today
3 to complete this form and you'll hear this again through
4 the meeting, we won't let you leave without completing
5 it.

6 What is this ratemaking change that we're
7 talking about? Basically in West Virginia you have had
8 two choices up to now, in insuring your workers
9 compensation risk. One has been to be a regular
10 subscriber to the workers compensation risk program. Now,
11 as a regular subscriber you basically are buying
12 insurance from West Virginia's workers comp fund and you
13 pay a premium as an employer and we pay the first dollar
14 coverage.

15 Large employers that have sufficient payroll,
16 sufficient financial capacity, sufficient safety and
17 accident provision programs in place may exercise a
18 second option, and that is individual self-insurance.
19 Where they may individually self insure their workers
20 compensation risk.

21 Now, if you live across the boarder, north or
22 south, you would find many many different ways to handle
23 workers compensation, because both of the adjoining
24 states have private insurance financing for workers

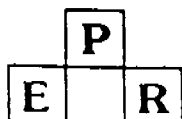


1 compensation claims. West Virginia does not offer that
2 and the state law does not permit that and that is not
3 what we are here to talk about today.

4 However, what you're going to hear is a program
5 that is going to sound and look and feel a whole lot more
6 like private insurance, and in a lot of ways it just
7 might be a better product line than what we could get in
8 the other states.

9 One of the things that you'll see as an
10 additional part of our underwriting system will be an
11 assigned risk program where we take the particularly bad
12 risk and segregate them so that their bad experience
13 losses, cost of their high claims do not affect other
14 firms that are not experiencing those same high rate
15 claims.

16 Another type of insurance products that will be
17 offered is called retrospective rating, and they'll talk
18 a little bit more about it in a few minutes, but let me
19 just say that that is a basic concept in insurance, first
20 of all; and secondly, it is sort of a settle-up at the
21 end of the year program. Where if you have estimated low
22 on what to pay us, you pay us a little extra at the end
23 of the policy period; if you've estimated high, it's a
24 rebate. Thirdly, or fourthly, depending on how you're

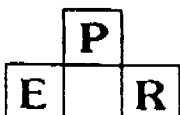


1 counting, but there's retrospective ratings and options
2 for both individual employers and groups of employers.

3 The last option would be deductibles. Now
4 deductibles are a pretty simple concept, I think.
5 Basically I think we all understand that; if Mr.
6 Humphreys and I both have the exact same automobile --
7 and we don't, I've seen his, it's a lot nicer than
8 mine -- if we both had the exact same automobile and had
9 the exact same accident record and safety record, no
10 points and all that stuff, and I had a \$100.00 deductible
11 and he had a \$300.00 deductible, who's paying the higher
12 insurance premium? I am. Because he assumed more of the
13 risk himself and I'm depending more on the insurance
14 program to pay any cost in the event of an accident.

15 So these are the central parts of what we will
16 be talking about today, but there's other components too.
17 First of all, this system, and I know I'm preaching to
18 the choir, but this system has really been messed up for
19 a long time.

20 We know that there's a lot of companies out
21 there that are classified incorrectly. We know that
22 there's a lot of companies out there where all the
23 payroll isn't being reported, but one of the first things
24 we've got to do is a field auditing project. To get in

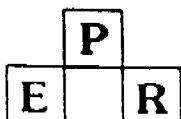


1 there and clean everything up and be certain that firms
2 are appropriately classed. Okay? That will be the first
3 step.

4 I think a second important factor here in these
5 programs and several other initiatives that we have
6 underway, has to do with accident prevention and safety.
7 West Virginia has about 720,000 employees; we have more
8 people working today -- employees, I'm sorry did I say
9 employers? We've got about 40,000 employers. We've got
10 720,000 employees working today in West Virginia. More
11 than at any time in the states history, but we have
12 70,000 workers compensation claims each year -- just
13 under 70,000. That's too many.

14 Now, it's only been recently, in the past few
15 years that the word has even appeared in West Virginia's
16 workers compensation law, and with this initiative and a
17 couple of other regulatory initiatives that are underway,
18 we want to help employers workers and the workers
19 compensation program, collectively, move toward fewer
20 accidents.

21 That's the answer to our cost problem; that's
22 the answer to our productivity problem; that's the answer
23 to so many problems in the context of workers
24 compensation. Don't have the accident in the first

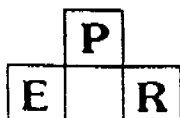


1 place. So you've got field auditing, you've got safety
2 and accident prevention, you've got ratemaking
3 underwriting, and you've got collections and accounts
4 receivables managed.

5 How many of you've heard about our collections
6 issue? The challenge? I know that sometimes news
7 doesn't make it to the panhandle like it ought to, but
8 we've had a pretty significant accounts receivables
9 problems in Charleston, where uncollected premiums have
10 built up over the years. Now, there is a whole range of
11 problems for that, reasons for that problem.

12 To begin with, we didn't even have a computer
13 system that even tracked how much people owed. Okay?
14 And we've changed the computer system and that's going to
15 be helpful. We didn't have policies and laws on the book
16 that were very conducive to it. We didn't have resources
17 dedicated, or a mind-set in our corporate culture, if you
18 will, that said account receivables management is
19 important.

20 Those things are changing, because there are
21 some important tools in here. We will move toward credit
22 risk analysis on our employers. We will move toward
23 different payment time-lines. For example, if a small
24 company -- and there's a number that don't pay a lot each

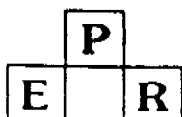


1 year -- if it's a small company that might benefit from
2 only paying once a year instead of four times a year, we
3 may be able to move in that direction. Monthly payments,
4 weekly payments, things of that nature that will minimize
5 our potential outstanding accounts receivables in the
6 long run, and help us manage that process.

7 These changes will not happen overnight. We
8 anticipate the following time line: After your comments
9 are in, on October 8th, we will gather together the
10 various comments, develop responses and then proceed to
11 analyze them as members of the performance council, and
12 what we hope to do -- knock on wood -- is we want to
13 bring this issue to closure by the end of October and
14 adopt the regulations.

15 Now, does that mean that on November 2nd, the
16 world will change and we'll be operating under a totally
17 different rates system for workers compensation? No.
18 The concept laid forth in the proposal is a transitional
19 plan. It will permit us to phase in these new
20 processes -- products, over the next 18 months or so, and
21 it will permit a measure of discipline and a development
22 of skills to accommodate the new system.

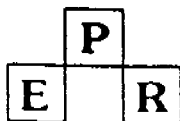
23 Now, I want offer a cautionary word. It's a
24 big, big undertaking, and we don't currently have skills



1 and resources in place in the division to accommodate
2 these changes. We will need additional people. We will
3 need different types of people in order to do this and,
4 you know, we need patience and understanding as we move
5 toward this whole new way of administrating this
6 insurance program. But the game plan is to move forward
7 later this month and to then -- probably the first step
8 would be the field auditing undertaking, to get the
9 account more clearly identified.

10 What I'd like to do now is introduce the folks
11 that will be making some presentations here this morning.
12 I'm going to do it in reverse order. Randy Suter, with
13 the Legal Services Division, will be conducting the
14 question and answer activity at the end of the
15 presentation. Cheryl Ranson will talk about field
16 auditing and accounts receivables management and those
17 types of things. Amy Graves will talk about the
18 different kinds of plans, the various insurance products,
19 if you will, that will be available. Chris DeAngelis
20 will talk about the subject of ratemaking in general.

21 Each of these people has participated in the
22 risk management team that has worked to develop these
23 products and they have done an extraordinary job, and I
24 want to publicly thank them for their work and commend



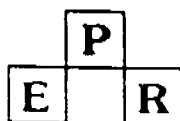
1 them for their commitment to excellence that they have
2 demonstrated.

3 I particularly want to recognize Ed Staats,
4 Chief Financial Officer of the Workers Compensation
5 Division, who has been the guiding force throughout this
6 process, and has played a critical, critical role in
7 bringing forward these particular ideas that will benefit
8 workers, employers, and most of all the general welfare
9 of the state of West Virginia.

10 Ed?

11 **MR. STAATS:** Thank you. The
12 Commissioner has indicated this was a big, big endeavor.
13 It is. When the Commissioner first hired me he handed me
14 a big, big problem. It was called a two-billion dollar
15 deficit and part of my job is to figure out how to
16 finance that deficit. That's what this hearing is all
17 about; how to finance workers compensation in the future.

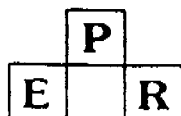
18 Series Nine, the Risk Management Rule Proposed,
19 that you have in front of you is that financing plan. It
20 simply represents another milestone along the
21 evolutionary road that we've chose to fix the workers
22 compensation system in West Virginia. That direction has
23 generated a significant amount of interest as well as
24 substantial agreement.



1 When we first mailed the notices -- and I think
2 all 40,000 employers got this little brochure -- we
3 started to receive some phone calls, and let me tell you
4 what some of those calls said. A company controller,
5 said people in his office cheered when they passed around
6 that brochure. They were complimentary about the
7 proposed changes. They've already seen positive changes
8 at the comp fund in terms of it's claims management
9 approach. They were very excited about the retros.
10 Their company had instituted a risk management program,
11 but our ratemaking system did not give them the proper
12 credit for that program. They suggested that we not
13 require a deposit for companies with good fund history
14 and good credit ratings.

15 Is Georgette Wilson here? Georgette Wilson is
16 the manager of the Bavarian Inn in Shepherdstown. She
17 called. She's very interested in the retro and was
18 excited that finally somebody was looking out for people
19 who don't have claims.

20 A small cabinet manufacturer said they've been
21 working hard but their premiums went up and they don't
22 have any losses. They would like to see multiple
23 classes. They were concerned that someone would keep
24 this rule from going through and felt that this one was



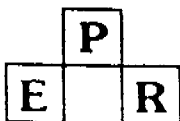
1 for the little guy.

2 Exhibits 2 and 3 of your handout reflect the
3 objectives that we're trying to achieve with this
4 financing plan, but the objective that most reflects the
5 underlying strategy of this plan is the one on Exhibit 3
6 that begins, Create a Framework to Finance the Workers
7 Compensation System in the Future. This strategy is a
8 back to basics fundamental recognition that the financial
9 ills of workers compensation can be corrected by
10 employers and their employees if the system provides
11 methods for those groups that directly influence workers
12 compensation rates.

13 This financing plan fixes the responsibility
14 for rates with the employee and provides rewards if
15 prevention of workplace injuries or illnesses occurs and
16 is reflected in a reduction of injuries. But such a
17 strategy, to be successful, requires full and complete
18 disclosure to you of all policies, procedures, methods,
19 cost-drivers that impact your rate.

20 How many people in this room know how workers
21 compensation calculates your rate? Just hold up your
22 hand. One. That's pretty consistent. It's about one
23 out of 100.

24 Well, under this financing plan no more

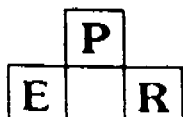


1 hocus-pocus. In order for you to be able to influence
2 your rate, you have to know how they're determined. We
3 intend to provide that disclosure to you. That is part
4 of this program.

5 As we move forward in this program you're going
6 to see multiple series of education segments. This is a
7 complex subject, in order to disclose we have to teach,
8 and we have to get your input as to the impact of the
9 direction we're going. My risk management team, the rest
10 of this presentation only can hit the high spots today
11 that are included in that proposed rule.

12 The Commissioner introduced those folks. Now,
13 let me tell you a little bit about their background.
14 Cheryl Ranson is a certified public accountant. She has
15 a degree in mathematics, physics, and science from WVU.
16 She has a degree in accounting from the University of
17 Charleston. She has six years experience in private
18 sector accounting management, along with eight years of
19 experience as an instructor in mathematical conclusions.

20 Amy Graves is a graduate of Purdue University
21 with an MS in management and a graduate of the University
22 of Michigan with a BA in economics. She has five years
23 experience in the life, health and property casualty
24 industry with CNA and Met Life, as well as three years



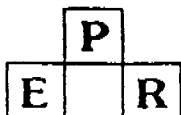
1 experience as an account analyst with Travelers Insurance
2 Company in underwriting, pricing, and marketing workers
3 compensation coverage.

4 Randy Suter, from our Legal Services Division
5 is a 1978 graduate of Western University College of Law.
6 He has private sector experience as well as 16 years
7 experience with various state agencies.

8 And finally, Chris DeAngelis, has a BA in
9 financing and actuary science from the University of
10 Illinois. He has seven years experience in property and
11 casualty insurance, including pricing and reserving a
12 workers compensation coverage. He has worked with
13 companies such as All State, Kemper, and St. Paul. He is
14 going to go through ratemaking with you.

15 **MR. DEANGELIS:** Thank you. You all have
16 to bear with me; I have a little bit of a cold so I
17 might be coughing a little bit, but I've got a glass a
18 water here to keep my throat clear.

19 As mentioned so far today, there's a lot of
20 components that go into this risk management rule and
21 they're very complex, but when we talk about ratemaking,
22 what we're talking about is the formulas, the
23 calculating, the methods that are used: one; to
24 determine the base rate for each classification, but also

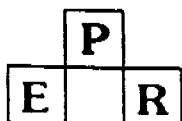


1 in determining each individual employers rate and
2 corresponding premium.

3 I'm sure for many of you, if you've ever tried
4 to call or inquire about how your rate was determined,
5 you probably feel a little bit like this gentleman in
6 here in the picture, where you're kind of left hanging,
7 you're out a limb, you're not really sure how you're
8 going to get it down; and that's why we're here today.
9 We're trying to change that.

10 The proposed rule is what has given us the
11 latitude to design the new system that we are going to
12 implement, and -- you know, as Ed said, we really can't
13 get into a lot of the detail because there's some complex
14 underlying mathematical formulas, and things like that,
15 but we do plan on having educational sessions, as we go
16 forward with implementation over the next six to 18
17 months, and as we do we will certainly pass that to you
18 all, and invite you all to be a part of that because we
19 definitely want your input.

20 What I do plan on doing today is talking about
21 the major objective that we've tried to achieve in
22 approaching this design of this new methodology, and
23 those four objectives are -- first of all we wanted a
24 system where the industries that were creating the cost



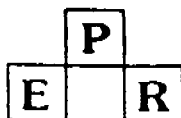
1 are going to pay for those costs.

2 Secondly, we wanted to have a method and a
3 model that really responds to employers actual claims
4 experience. So if you're doing a good job, your rates
5 can go down, if you're doing a bad job as an individual
6 employer, your rates are going to go up.

7 The third thing we've tried to accomplish and
8 want to accomplish, is to have a model that most clearly
9 communicates to you, the employer, what is the underlying
10 cost; what is driving those cost and how can I, as an
11 employer, reduce those cost, and how does that fit in to
12 reducing my rate so that you understand those things.

13 Finally, we needed a model that can adapt to
14 some of the changes that are happening within West
15 Virginia workers comp, but we also needed the flexibility
16 to be able to support some of these new products that
17 were mentioned so that we can look more like an insurance
18 company.

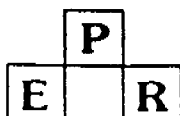
19 Before I get into the first objective, I wanted
20 to talk a little bit about a -- somewhat of an underlying
21 theme throughout my presentation that has really been a
22 tremendous boost to us. As I say, the proposed rule that
23 allows us the latitude to design this new system, these
24 new methodologies -- but it's really something that



1 started a couple years back at the division who will
2 allow us to implement it -- and that is two systems; two
3 administrative systems that had been put in place at the
4 division. One of them is the mirror system, and it's a
5 world class reserving tool that carries 190-some
6 variables. It creates reserve. It does a lot of
7 functionality; it will help us to have a lot more data
8 capacity in the future and allow us to do a lot more
9 analysis.

10 The second system, the WCIS system, is more of
11 a data base, kind of a storage area for the information,
12 that will allow us to extract the kinds of information we
13 need to perform these analysis and also allow us to get
14 it in the format that we need. So this is something that
15 is consistent throughout everything that I'm going to
16 talk about. This is the foundation of why we're able to
17 do that.

18 To get into my first objective -- I want to put
19 an example up here that's not in your handouts -- but
20 basically what we're trying to say in our first objective
21 is that -- you know, if I'm a widget maker and I'm in
22 class X, then all the costs that are coming from my
23 widget industry are going to be paid for by the employers
24 who make widgets.

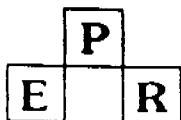


1 And, you know it sounds pretty fundamental and
2 pretty simple, but there's a lot of things that have
3 really created problems in the past that have not allowed
4 us to do that in some aspects, and we are addressing
5 those problems now.

6 How can we do this? Well, again it gets back
7 to the data capacity and the ability that we now have to
8 perform some of these analysis on individual industries.
9 We have formulas that can more closely tie into what is
10 actually happening in the construction industry? What is
11 actually happening in the coal? What is actually
12 happening in agriculture?

13 We can start breaking out the information, by
14 industry, more closely and follow that and understand
15 what's happening so that we can assess the right rate to
16 the right groups of employers.

17 At the same time we have the ability to create
18 more methods, more ways of working at it. We have checks
19 and balances now. We have the ability to make some
20 projections and look at them; but look at them from four
21 or five different ways, so that -- you know, if a couple
22 of projections are not in the ballpark, if they look a
23 little unrealistic, well, we at least can validate that
24 now, whereas before we were somewhat limited in the

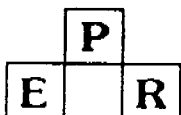


1 numbers of types of analysis.

2 Two other key components, one which will be
3 talked about after I'm done, is the field audit. This is
4 absolutely critical, because we need folks to be
5 classified correctly. We need folks to be reporting
6 their payroll correctly. In doing the analysis on an
7 industry, if I have a bunch of folks that in this
8 industry -- they're saying that they're contractors, but
9 they're really not, a bunch of them aren't in there --
10 it's not going to tell me a lot, because it's not the
11 right underlying data. I need to be able to know, you
12 know, which groups aren't -- to know that the groups are
13 classified correctly in order to do a good job of
14 creating their rate.

15 The second one is in special projects that
16 we'll be able to do, to more thoroughly understand. The
17 second objective -- and actually I'm going to throw an
18 example up here real quick -- it's not in your -- it's
19 more of an illustration, it's not in your presentation;
20 but what we're trying to do in number two is say that if
21 I'm an employer and I'm having good loss experience, my
22 rates are going to go down.

23 If I'm having bad loss experience, it's going
24 to go up, and my example here, it kind of shows a little

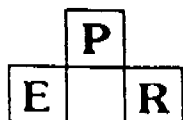


1 bit about what the formula looks like, but basically you
2 have as an employer some actual losses going back in
3 time, and based on -- the way we calculate the rates, we
4 assume that certain things are going to happen. Well,
5 that pattern also talks about some kind of expected loss;
6 because of that pattern we expect you to have a certain
7 number of losses.

8 Now, when we compare your actual losses to your
9 expected, if you've done better, then you're going to get
10 a mod factor that will reduce your rate. At the same
11 token, if you've done worse, then you're going to have a
12 mod factor that's higher than one, and it's going to
13 increase your rating.

14 Again, how can we do this? Well, we can do it
15 if I can find my slide. Again, it gets back to the fact
16 we have more data capacity to do more analysis, and it's
17 this analysis that can help us identify some of the
18 different things that are happening on an individual
19 employers loss experience.

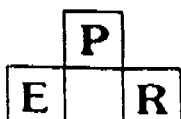
20 We can do calculations that can allow different
21 industries to be looked at from different, different
22 ways. For example, the number of years of claims
23 experience used. You know, that may vary. Different
24 industries may have a lot longer tail claims. How much



1 weight can we give an employers experiences? How much do
2 we want to limit large losses?

3 We want to probably vary that because in some
4 industries the losses are extremely severe, and in other
5 ones they're pretty small, but maybe you get a lot of
6 claims, so this flexibility has allowed us to put
7 together some methods that more closely relate to the
8 experience that each employer has, and then, you know, it
9 will help them to adjust their rates because of those
10 reasons.

11 The third objective kind of fits in line with
12 the reason why we're here today, and that is we want to
13 do a better job of communicating to you all what's going
14 on here; you know, what's happening. And I think the
15 turnout is great, and I'm really glad to see you all, and
16 hopefully you'll find this informational, but what we
17 want to do from a ratemaking standpoint is when you get
18 your bill, or if you inquire, we're going to be able to
19 break out, okay, you have a certain rate, and that rate
20 is made up of different pieces, and you're paying this
21 much because of claims cost, and you're paying this much
22 because of -- well, it really creates -- in order to
23 administer a program, there's some administrative
24 expenses that we have to pay, and so you're paying a

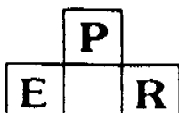


1 little piece for that, and as heard earlier there's a
2 deficit and we need to reduce that to make the division
3 more fiscally viable, so you're going to pay a little
4 piece of that.

5 But we want to be able to communicate to you
6 all that these are the different pieces of the pie so
7 that you know that obviously the biggest piece is claims
8 cost and when you reduce your own plan, this piece of pie
9 is going to get smaller, and we want you to be able to
10 take that and empower yourself to lower your own rates.

11 There's a couple other pieces that, that are
12 roles that are happening right now that may be included
13 in this if they're applicable; discounts for a qualified
14 loss management program which basically helps people to
15 reduce there own risk; loss prevention surcharge, that's
16 for the folks that are not really doing well with
17 reducing their losses and are having very bad experience,
18 and adverse risk assessments; some of these things will
19 be talked about later on in some of the other
20 presentations; but the bottom line is we want to
21 communicate to you so you know what's happening and how
22 it impacts you.

23 The final objective, again is, we want to be
24 able to have a model that is flexible, that adapts to



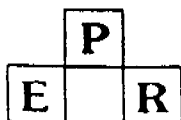
1 changes in the workers comp environment, but also can
2 support, is flexible enough to support new products. As
3 Ed mentioned, he said no more hocus-pocus, and we feel
4 that some of things that are happening and flexibility of
5 the model are going to be determined by the folks who sit
6 back here.

7 As Commissioner Richardson said, there's four
8 folks who represent employees, there's four folks that
9 represent employers and these are the folks that are
10 going to be making those decisions that impact you and
11 it's going to be a lot more out in the open how these
12 decisions are being made.

13 Their interest -- they're representing your
14 interest and we feel it's a lot better way to approach
15 some of the different assumptions that are required
16 whenever you're making projections, and that's really
17 what ratemaking is, in an actuary effect.

18 We feel that, from that, the model has a lot
19 more flexibility. It's going to be a lot more equitable
20 while at the same time, because of this new data capacity
21 in some of these new models, we are going to be able to
22 start looking more like an insurance company because we
23 are going to be able to start supporting new products.

24 Now, here to talk about some of those products



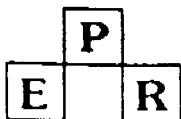
1 is Amy Graves.

2 MS. GRAVES: As Chris talked to you
3 about the ratemaking methodology; if it weren't for that
4 new methodology we wouldn't really be able to have the
5 flexibility to support the alternate rating plans that
6 I'm going to talk to you about today. When I thought
7 about what I should talk to you about, I thought of some
8 questions that you might be having right now when you
9 think about these alternative rating plans.

10 One obviously is what are they, which one's
11 best for me? The second one is, how do I know if I
12 qualify, if I'm eligible for one of these plans? And
13 then finally, once I'm eligible, or maybe I've had
14 coverage for a little period of time, how do I know if I
15 can continue to be eligible for coverage? I'm going to
16 talk to you about some of those things.

17 Just for a reference all of these plans are in
18 the rule in front of you, Sections Nine through 13. I'm
19 going to talk about each one of the plans. Those plans
20 are: deductible plan, both individual and group
21 retrospective rating plans, and the adverse risk plans,
22 as well as self-insurance.

23 But just to set the record straight, the
24 standard coverage plan being guaranteed cost and self-

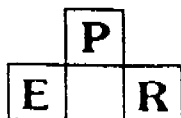


1 insurance are still going to be offered. What I'm
2 talking to you about now are mostly financing plans to
3 finance those coverages.

4 As to the first question, what are these plans,
5 which one's best for me; well, you've heard a little bit
6 about the deductible plan from Mr. Richardson. Really
7 not that complex for most of you who have automobile
8 insurance, health insurance, dental insurance; really no
9 difference. Basically it is for selecting a deductible
10 of a certain dollar amount, you get a reduction in
11 premium depending on the size of the deductible you
12 choose.

13 The only difference here is we're talking
14 workers compensation. The deductibles typically will be
15 higher than \$250.00. We're talking a range from several
16 hundred dollars to several thousand dollars, and then the
17 premium reduction would be comparable to those
18 deductibles.

19 The one primary advantage of this plan is that
20 it allows the smaller employer who may not otherwise
21 qualify for the experience rating that Chris talked to
22 you about, to qualify for some sort of premium reduction
23 in exchange for basically self-insuring a portion of
24 their risk.

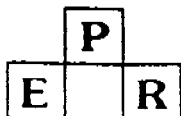


1 Now, in order to qualify for the plan there
2 will be certain things that will have to be reviewed by a
3 division representative before allowing coverage in that
4 plan. For example, because someone signing up for this
5 plan has to take on some financial responsibility,
6 certain things like your financial experience, your
7 financial statements would be reviewed before allowing
8 you to participate in this deductible plan.

9 The individual retrospective rating plan is a
10 little bit different, not too complex however. If you
11 were interested in this coverage and you filled out an
12 application, you have the premium size to support and to
13 be eligible for this plan; what would happen is that the
14 initial outset of coverage, you would pay the premium
15 that you would normally pay under the guaranteed cost
16 coverage.

17 What will happen however is, at the end of a
18 specified coverage period, you would either be surcharged
19 or you would receive premium credit, depending on your
20 experience. If your experience was such that you have
21 less than expected losses at the end of that coverage
22 period, your premium would be rebated at the end of that
23 coverage period.

24 Although it works on the flip side as well; if

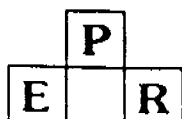


1 your experience was far worse than you expected, then you
2 would have to be surcharged additional premiums to make
3 up for that difference.

4 The advantage of this plan is that it allows
5 employers that are participating, making substantial
6 strides in their claims cost reduction in a short period
7 of time. For example, over a course of a year, who have
8 fewer than rather than greater premium reductions, in the
9 current experience rating plan, that looks across a
10 longer period of time and you may not see the immediate
11 results of claim cost reductions in the normal experience
12 rating plan.

13 The group retrospective rating plan is really
14 no different than the individual, other than the fact
15 that obviously it's going to be a group of employers
16 rather than one individual employer. Basically employers
17 interested in this plan must be grouped in a similar
18 manner. They must have similar classifications. There
19 are several classifications in the current workers
20 compensation system. This group plan allows employers in
21 similar classifications to group together for purposes of
22 ratings.

23 What it allows employers to do, particularly
24 small employers, is to have a greater impact on the way

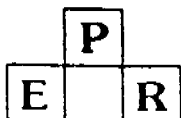


1 their individual premiums are calculated and have greater
2 impact on their resulting premium. The group, however,
3 also has to be sponsored by a sponsoring organization and
4 be formulated for purposes of reducing claims cost.

5 The final plan, the adverse risk plan, as you
6 can tell by the word adverse, is not one you're going to
7 be running up to sign up for. This plan has been
8 designed with the substandard employer in mind, and what
9 I mean by substandard employer is that employer that, for
10 whatever reason, is not complying with the rules and
11 regulations that you see in front of you.

12 There's various criteria for placement in to
13 the adverse risk plan, and all of those are highlighted
14 in the rule that you have in front of you, and other
15 reasons for placement in to the adverse risk plan may be
16 that the employer has far worse than expected loss
17 experience and has not been really taking measures to
18 reduce those claims cost and his losses.

19 There is a benefit -- it may not be immediately
20 apparent, but if we are surcharging the substandard
21 employer based on the reasons for their noncompliance
22 with rules and regulations; if we are surcharging them,
23 what that means is that those employers that are
24 currently following the rules and regulations would not



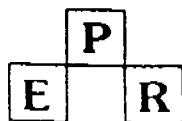
1 be paying as much premiums.

2 If you think of the premium that the workers
3 compensation division must collect in terms of a pot of
4 money, substandard employers will be paying more into
5 that pot, which would therefore mean that those employers
6 that are following the rules and regulations would have
7 to pay less to make up that pot of money.

8 One other thing about adverse risk plan before
9 I go on, any placement into that plan is not something
10 that's going to be taken lightly. Any placement into
11 that plan must be approved by a division representative
12 before placement is approved into the plan.

13 Onto the second question. Okay, I know a
14 little bit about these plans, how do I know if I qualify?
15 There are going to be two processes. One is a
16 qualification process; the other is more of an assignment
17 or a mandate process.

18 Basically in the qualification process there
19 will be applications that will be designed for each of
20 these plans as we go through implementation throughout
21 the next several months. On that application you would
22 be asked to fill out information such as, what is the
23 business operation; what has your financial experience
24 been; what have your losses experience been?

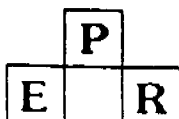


1 Once that information is documented and
2 submitted back to the division, a division
3 representatives would look at this information and review
4 it to determine eligibility. For example, as we
5 mentioned in the deductible plan, if you're looking to
6 have a \$10,000 deductible, well, financial information is
7 going to be very important.

8 If you're talking about a group plan, obviously
9 you're going to be looking at the classification, check
10 to see if that is a similar classification to the other
11 group of employers that you want to be grouped with.
12 The other information that would be considered once the
13 application is submitted is not only the rating plan that
14 you're interested in but also the coverage period
15 desired.

16 One of the things that we are considering
17 implementing is the opportunity to have alternative
18 coverage periods other than an annual period. For
19 example, perhaps six months, perhaps 18 months; a range
20 within that time frame.

21 Once the application is reviewed, a coverage
22 period has been determined, a coverage has been selected,
23 documentation will then be submitted back to the employer
24 stating what the coverage is and what your coverage



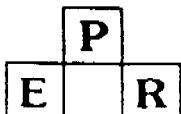
1 period is.

2 The mandate process works fairly similarly; the
3 only difference is that you may not through the mandate
4 process be approved for a particular rating plan that
5 you're interested in; you may be assigned to a specific
6 plan. For example, the adverse risk plan, which is
7 something that would go through this mandate process.

8 The final question: I've been covered for a
9 year. I'm in the deductible plan; I'm going along pretty
10 well but I'm wondering what's going to happen next year.
11 Am I going to still be eligible?

12 What's going to happen is there are going to be
13 a series of reviews that are going to be happening. One
14 is a scheduled review and the other is more of an adhoc
15 review that's going to happen throughout the coverage
16 period. Scheduled reviews will typically happen at the
17 end of a coverage period.

18 What will happen during this review is that a
19 division underwriter would be looking at the account,
20 looking at the experience that happened throughout the
21 year, looking at the financials, looking at the operation
22 itself. What's happened throughout the year? Have you
23 changed the course of your business? Have you gone into
24 a new business?

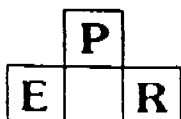


1 Those types of things would be reviewed and the
2 criteria for the plan will then be also considered to
3 determine your eligibility for continuing in a specific
4 plan.

5 The adhoc review can be either conducted by
6 division representatives or they can be based on a
7 request from employers. For example, a division
8 representative recommended review might occur if, for
9 example, a claims representative notices that a claim has
10 occurred that leads them to believe that maybe this
11 employer is not doing what they're currently classified
12 as doing. At that time that claim representative might
13 mention this to the division underwriter responsible for
14 this employers account and say, gee I think we should
15 check this out.

16 In that case what might happen is the
17 underwriter would recommend that a field auditor come out
18 and look at the employers operation to determine what
19 they actually do, and make sure that the classification
20 is still accurate.

21 Another instance where an employer might
22 request the review, is that they call into the division
23 and to their accounts representative and say, you know
24 I'm purchasing a new business, can I still keep my



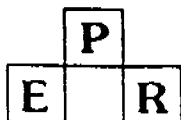
1 current classification? I'm doing something new.

2 In that case a request might be made again for
3 a field auditor to go out and look at the operation and
4 determine what new activities are going on there, if any,
5 and determine if any change in the account status needs
6 to be made.

7 What I want to stress here is that any coverage
8 plan really takes the involvement of both the division
9 representative and the employer to make sure that
10 coverage is accurate and that premiums are charged
11 correctly. It's not a one way street, and it really
12 needs your input.

13 One thing that you'll see, most of you -- on
14 your chairs this morning was a survey -- one of the
15 questions in there is, which of these alternative rating
16 plans would you be interested in? Now, I'm not going to
17 write your name down and say, okay, we're going to put
18 this person in this plan today. We're really just trying
19 to get an idea of what parts of the plans really interest
20 most of you, to determine, when we go through our
21 implementation of these plans, which ones should be
22 really considered rolling out first.

23 Cheryl Ranson is going to talk a little bit
24 about the field audit, procedures, and the credit

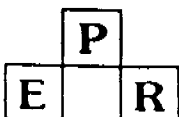


1 management policies that really help support these plans.

2 MS. RANSON: Thank you, Amy. What I'm
3 here to talk to you about this morning has more to do
4 with what I consider to be common sense than to actually
5 give you information on the plan such as Amy did; and
6 even though it is common sense, it might still be
7 something that we haven't thought about, or perhaps long
8 about.

9 My first question to you is: Do you admit to
10 the problem? When we conducted pilot audits, we found
11 that approximately one-third of the employers that we
12 were looking at were misclassified. Now, think about
13 what was said about ratemaking and how critical it is to
14 be in the right class, and yet we're talking about one-
15 third of the people in this pilot that we were running
16 that was misclassified.

17 So not only is the class that that one-third is
18 in, that class is wrong. But the class that they should
19 be in, is wrong. So if I take -- for example, these
20 three people on the front row, and we say one of them is
21 misclassified and they might -- let's say it's the
22 individual in the middle -- and she might be in a higher
23 risk class than what she's currently classified. Do the
24 people in that low risk want her in there? No. Would



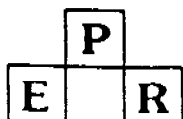
1 you want her in there if she's high risk? No.

2 Now, look at the other r side of the employees,
3 the gentleman that's in a high risk class, wouldn't he
4 want her in there so that they could spread the risk?
5 Sure. So that's what we're up against.

6 Now, let's look and see how some of these
7 things could have happened. For example, loggers
8 classified as truckers; does that make sense? Do you see
9 how that could happen? You guys are out on the highway,
10 have you ever gotten behind one of the trucks carrying
11 logs? But is that the same risk as someone who drives,
12 let say a furniture truck. You know the loggers the one
13 who actually cut the logs down -- I don't know.

14 Neon glass manufacturers classified as
15 advertisers -- that's one of my favorites. I see people
16 smiling, they see how that might happen. What are all
17 the signs made out of in the windows of stores and things
18 for the most part? Neon. Now, is that as safe? If you
19 work with neon gas, is that as safe as advertising?
20 Advertisers may say it is but for the most part we
21 don't -- we probably don't think it is.

22 High risk occupational is classified as
23 clerical; this is something that is pretty new. With all
24 the downsizing that's going on, people our subcontracting

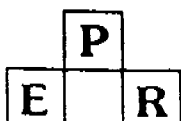


1 now -- it used to be you just subcontracted out your
2 clericals, but now you can subcontract out anything just
3 about. So that's kind of what the on set of the
4 downsizing, and that's come with the onset of the
5 downsizing.

6 And then the last one, salesmen classified as
7 manufacturers. This may have happened to someone in this
8 room. You started out as a manufacturer. For years you
9 build your base, your customer base, and you decide you
10 don't want to put up with the hassles of manufacturing,
11 so you turn to sales, but you don't call the division and
12 tell the division that you're not manufacturing anymore;
13 so what's happening? You're paying at a manufacturing
14 rate, which is a higher risk than sales.

15 So whether these misclassifications are part of
16 the division, and the division can take ownership or
17 whether they're due to the employer, the employer can
18 take ownership; what we're concerned with today is what
19 are we going to do about this. It is critical to
20 ratemaking.

21 A gentleman in Barbersville said, well, you
22 know workers comp is like a bag of jelly beans; we've had
23 to pay for that bag of jelly beans. But what we're going
24 to try to do is have the people who are actually eating

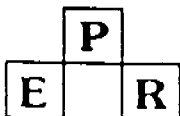


1 the jelly beans pay for the jelly beans. That's what our
2 goal is.

3 What we're going to do is have this field
4 audit. Now, why are we doing this field audit? Well,
5 one of the reasons is, as we've said, so many people are
6 misclassified and it's critical to ratemaking. We want
7 to make sure that we know what the employers true risk
8 are. How can we assign you a rate if we don't even know
9 what you do? If you're in this room you're probably
10 thinking that yourself; that's probably why you came.

11 To ensure employers are reporting payroll
12 correctly -- probably, again the people in this room are
13 reporting the payroll correctly, but do you want people
14 in your class underreporting payroll? Sure, you don't
15 want that. Do you want people in your class reporting
16 payroll to the wrong classification? No. So that's
17 another reason for these audits.

18 To identify possible safety and loss control
19 candidates; that's something you're going to here about,
20 we're going to be hitting it harder and harder in workers
21 comp, is the safety and loss, because that's a win/win
22 situation for the employers and the employees, and that
23 is the, one of the only ways that we can keep our rates
24 from going up is by reducing our claims, so there will be

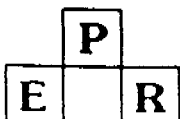


1 a preliminary safety and loss control review.

2 We have a lot of employers who run safe shops.
3 We have a lot of employers who are lucky, that are
4 running shop where there's accidents waiting to happen,
5 and if we can get to those employers before those
6 accidents happen and turn them over to our safety
7 director, then maybe we can get in there and help the
8 employer to reduce so of these claims.

9 Who are we going to audit? Now that we have
10 our computer system and we're getting more and more data
11 out of it -- this amazed me -- we have 40,000 employers
12 in West Virginia, approximately, there are 4,500 of these
13 40,000 employers, a little over 10 percent that make up
14 85 percent of the premiums -- yeah -- so just think, if
15 we could get those 4,500 employers in the right class,
16 that's 85 percent of the premium that's going to be
17 right, re-class, and then the other 15 percent that's
18 left, let's say two-thirds of them are all ready
19 classified correctly.

20 So, think about how far or what a big step
21 we're going to be taking in to getting our premiums
22 classified correctly for ratemaking purposes. So we're
23 talking about this audit bliss or -- I prefer to call it
24 verification -- audit used to have a kind of an I.R.S.



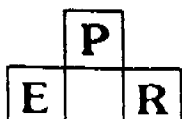
1 connotation to it. We're just out there to verify that
2 you do what you say you do and you pay the payroll that
3 you tell us you pay.

4 We're talking about 10,000 or 10 percent of our
5 employers, but what an impact that 10 percent is going to
6 make. We're also going to look at classes that have a
7 history of underreporting in default.

8 And then the last one's that I want to point
9 out to you is the employer. I get calls every day --
10 well, when I'm in the office and not in Martinsburg -- I
11 get calls every day from employers that say, XYZ Company
12 is operating down the road and they're not paying comp,
13 and I have to pay comp, and I can't be competitive, and
14 stuff, and then I said well, you know, you need to turn
15 them in, and they're like, oh, no, no, that's your job.

16 I'm going to tell you, we don't -- we can't fix
17 what we don't know. So if you know of employers out
18 there that are operating that are paying under the table,
19 or they're not paying their workers comp, they're raising
20 your rates, folks. So if you know about them, then you
21 need to report to our fraud unit.

22 Because you are essentially helping them raise
23 your rates, because if their employers get injured, we
24 still have to pay for them, so it's very important that

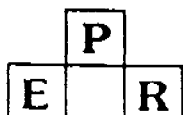


1 if you know about that happening, you let us know.

2 What are we going to do on these audits? It
3 shouldn't be any surprise. It pretty much goes along
4 with what we were talking about. We're going to check
5 the payroll to make sure that you're reporting the
6 payroll appropriately. We're going to make sure you're
7 in the right class and we're going to look at employee
8 ratio safety review.

9 If I'm sitting out there saying how in the
10 world is the division going to get out and do 4,500
11 audits over the next 18 months, I'd probably be on the
12 road a lot. If that's -- if we were going to use
13 division employees, but what we're going to do is through
14 a R.F.Q. process, we're going to make basically divide
15 the state up into regions and then hire CPA, PA,
16 qualified firms in those regions to go out and audit
17 those employers.

18 We will have a small internal staff, and that
19 internal staff may actually be doing the audits; they'll
20 be making the requirements, reviewing the audits and
21 probably controlling our vendors; we will actually be
22 reviewing the work of the CPA firms that we are sending
23 out to audit people. Where are these scheduled to begin?
24 Approximately January of '97. It's coming up pretty



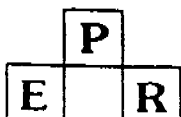
1 fast.

2 And then, after we get through the initial
3 4,500, then these employers will be put on a regular
4 audit schedule. Many agencies do that, it's a matter of
5 keeping internal records available, and there will be,
6 even for some of the smaller employers, some random type
7 audits, so everybody has the opportunity to pop up at
8 some point, at some time.

9 Where are these audits going to take place? It
10 has to be on the employers site. That's the only way
11 we're going to get our butts in gear. So we'll be
12 sending some CPA, some Pa out there.

13 The next topic that I want to talk about is the
14 receivables management or tax liability section which is
15 section 14 of the rule, and as I was reading this, and as
16 I look at workers comp, some things came to mind for me,
17 that that was taking a lot of abuse over this section
18 because people keeping seeing that Beach Boys song, but
19 wouldn't it be nice if workers compensation could shift
20 from those people who are willing to pay, which is
21 probably all of you, to those people who should pay.

22 You know, we read in the paper all the time
23 about people, even though they're extremely patient who
24 who run up -- whatever, a 500,000 or a million dollars or

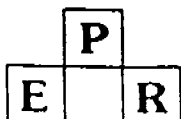


1 whatever, debt to the fund; wouldn't it be nice if we
2 could shift those to those people?

3 The second one, if the workers compensation
4 division could be proactive rather than reactive dealing
5 with problem employers? I don't know how many of you in
6 your business work with your receivables management, but
7 in workers comp, in the past, if we had an employer,
8 let's say that that employer had a 70 year history, never
9 missed a payment, was always on time, just a joy to work
10 with, and then we have another employer that never makes
11 a payment on time, we were treating those employers the
12 same way, as far as receivables management.

13 Do you do that in your business? Could you
14 stay in business if you did that? No. So we're going to
15 look at being proactive with these employers. And then,
16 if we could get some of our premium earlier, then we
17 could invest it, then maybe we could get a larger return
18 on our investment, then we wouldn't need to collect as
19 much premiums. We're hoping that this rule's going to
20 allow us to do these things.

21 There's mainly two parts to this Section 14;
22 the first part is they're going to assign a tax liability
23 rating to employers, and again that gets back to what I
24 was talking about. They're going to have, sort of a

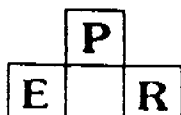


1 credit risk which we'll be looking at, and then we'll
2 also determine the frequency of premium deposits. This
3 particular part of that rule -- if you start reading it
4 and it sounds complicated -- talk to your accountant,
5 talk to the people that do your payroll, because we took
6 this part of the rule from the 941 payroll deposit rule.

7 Tax liability, I'm not going to dwell on that.
8 The first part is more common sense. If you're checking
9 out on customers and your giving credit in your own
10 business, you're going to look at some of these things
11 that we have listed, but what I want to point out to you
12 is the intangibles that we're going to be looking at.

13 What type of business are we talking about?
14 What type of industry, is the industry a growing
15 industry? Is it a shrinking industry? Prior payment
16 history with the division. Has the management been good
17 with the division? Have they been making their payments?
18 Or are they management that open a business, closes it
19 down, open it, close it down and never pay their comp?
20 This will allows us to close that loop hole for these
21 people.

22 One other thing I'll point out, we've had a lot
23 of small employers ask me; I'm a small employer, there's
24 no way you can give a \$100,000 credit, so does that mean

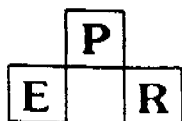


1 that I have to be a C credit? No. This liability is not
2 to exceed -- and we recognize that small employers can
3 have good credit history, they generally do have credit
4 history -- so you can still have an A liability rating,
5 maybe a \$5,000 limit, we would reduce the limit for you.

6
7 These are going to be important because that
8 might determine which ones of thee plans you'll be
9 allowed to go into. As you read the rule and you read
10 the plans, it'll say maybe an A or B are eligible for
11 these plans, so this liability rating will be important
12 to employers.

13 Another part of the liability rating that's
14 going to be important to the employer is when we want our
15 money from you. One of the things that really new is
16 this first one; we've got about 13,000 employers that fit
17 in that category, that pay \$500 or less for a fiscal
18 year, so we're going to let those employers pay annually.
19 One shot, and then at the end of the year they settle up
20 with the fund.

21 I had an employer come up to me in Elkins that
22 said they pay \$2.50 a quarter for workers comp. They had
23 to fill out the form and then pay the processing fee --
24 and this would be the kind of employer that would just

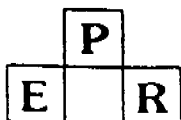


1 pay us at the beginning of the year and at the end of the
2 year they would settle up. Now, think how much paperwork
3 that's going to save, for the employers and for the
4 division. So that's the first message.

5 Then I want you note the difference between A
6 and B and C, if we have someone with a bad credit rating
7 or a C credit rating, we want our money faster from those
8 people. You're doing business, if you have somebody
9 that's a customer and they have a bad payment, and
10 somebody that's a customer has a good payment history,
11 which one do you want to get your money from faster?

12 Well, that's what we're looking at. It might
13 not even be that an individual is a -- necessarily a bad
14 risk, they just might not be able to make that quarterly
15 payment. It might come at a bad time in their business
16 cycle, but they can make that payment if it's a weekly
17 payment or a bi-weekly payment.

18 The next two that we have are just in there for
19 you to review at your leisure. Those are very similar to
20 the flow charts that is in the 941 federal reporting
21 book. You're probably standing there as I was doing and
22 saying, well, what if I don't deposit enough money?
23 Well, we have the same rule, the same power, just like
24 the IRS does, and you can look at that. If you don't

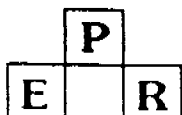


1 deposit enough money, but you fall within that safe
2 harbor, then there will not be any penalty or interest
3 assessed as long as that monies paid by the make up
4 period.

5 The last one that I'm going to share with you
6 are some questions that came to me as I was reading that
7 section of the rule. The first one is: You're telling
8 me I have to make these payments, I might have to make it
9 by the next banking day; what if the bank is closed when
10 I go to make my deposit? Well, if the bank is closed
11 then you deposit it the next banking day.

12 This question here, is the IRS is moving to
13 electronic funds transfer. The newspaper has been full
14 of articles about this. You're probably working on that
15 yourself in your businesses. Is the division going to
16 lean in that direction? We will, but we have to get all
17 of this deposit and receivables phased in and running
18 smoothly before we could go to the electronic transfer.
19 We have to get the bugs worked out of that one.

20 Now, Ed Staats is going to talk you a little
21 bit about some things that you can anticipate over the
22 next 18 months, and I do want to say as he coming here,
23 that I know that we don't have all 61 pages of that rule
24 memorized right now, and you might not be sure which plan



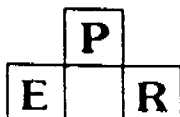
1 you want, but there will be educational sessions on that
2 to help you pick a plan.

3 **MR. STAATS:** To give you a little
4 information, Cheryl told you the \$500 or less impacts
5 13,000 employers. She told you about the need to do
6 field audits, and I think she told you that we had done a
7 pilot program that indicated that there was a one-third
8 classification issue. Let me tell you what the cost is
9 of just that classification issue.

10 If we extrapolate the results of that field
11 audit program out to the population as a whole, all
12 employers, there's a 15 million dollar annual cost here,
13 from the employers who are willing to pay, and in the
14 right classification to the employers who are not willing
15 to pay. You're paying for that. We'd kind of like to
16 correct that.

17 You have paid for poor administration, and for
18 poor management in the past. It's in your rating. Part
19 of this effort is to straighten out that poor management
20 and poor administration with professional management. A
21 program that we did early on in our attempt to find out
22 what the problems of workers compensation were, was a
23 program that we called dollar leaks.

24 As most of you may realize the record keeping



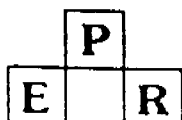
1 at workers compensation was very bad in the past.
2 There's no costing records, so you can't dig into it and
3 find out what's driving cost, that's where the
4 inefficiencies are. In this program we asked the people
5 in the fund to tell us, to visualize the fund as if it
6 were a big bucket and had holes on it, and that there
7 were dollars just falling out of it, and we asked the
8 people who were doing the work to tell us what they
9 thought those dollars were each year.

10 Their estimate totalled up 50 to 70 million
11 dollars a year. We have a lot to fix, and that's what
12 we've been working on. Does anybody remember the ketchup
13 commercial from many, many years ago? A white background
14 on the T.V. set, Heinz ketchup bottle turned upside down,
15 ketchup coming out slow --

16 **WHEREUPON**, there was a brief interruption with laughter.)

17 Thank you very much. As you know we have done
18 this several times. They had it turned up in that
19 commercial, and in the background Carly Simon is singing
20 that song Anticipation. Well, that's what you can expect
21 as we implement this rule.

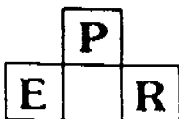
22 On page -- I think it's 60 or 61, Section 19, 1
23 and 2 of the rules, it talks about the implementation
24 phase. You've endured over the past several years; we've



1 practiced changes in claims management, financial
2 reporting, receivables management; we've upgraded people
3 skills; we've upgraded our technology; we've redesigned
4 processes; we've expanded the statutory authority of the
5 fund so that it can be managed and we've followed a
6 constant vision for a better workers compensation system
7 in this state.

8 Those foundation pieces, so necessary to allow
9 us to implement something like this have not corrected or
10 overcome all of the obstacles, and those obstacles have
11 to be overcome in order for us to bring better value to
12 the state holders in this system.

13 Those obstacles include a critical need to
14 clean up information, such as the field audit; a critical
15 need for the support of a very sophisticated technology
16 system; a critical need for changing our existing
17 compliment of human skills to include risk management and
18 insurance skills, possessed by people committed to do
19 whatever is necessary to correct this system; a critical
20 need to educate the stake holders in this system, to
21 understand the impact of their actions on their rates on
22 the system; and a critical need for a commitment of
23 support, from you, for us to continue to improve this
24 system; and a critical need for you understand that this



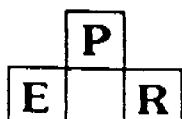
1 is a long-term plan.

2 It can not be done overnight. The obstacles
3 through that success is very very great.

4 You'll find it so much more capable -- anybody
5 got a kitchen knife -- of implementing -- the blade's too
6 big -- of implementing that with the right tools, because
7 you take a kitchen knife and do this, that'll come right
8 out of there, and that's what we've been doing. Every
9 success though brings it's own set of problems.

10 Successful implementation of this rule is going
11 bring another set of problems. They're going to create
12 problems for you. It's going to create more challenges
13 to the fund. As we shift from the three possible methods
14 of payment for workers' compensation which is: those who
15 are willing to pay, which are you, to those who can
16 afford to pay to a system of those who should pay.

17 You are going to be inundated with proposals,
18 if you have not been already, from organizations
19 developing loss control programs, including offers to
20 administer the various types of financing plans. You're
21 going to have to judge those proposals on a what's in it
22 for me basis. Who will do the best job for me
23 and my group? How much is it going to cost? What are
24 the services you're going to receive? What kind of

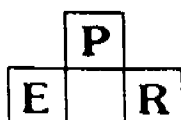


1 criteria do you have to meet to be part of the group?
2 What kind of risk do you take as being part of a group?

3 For instance -- you know, in everything, the
4 devil is in the detail. You need to read the rules very
5 carefully. For instance, under those group financing
6 method, there's a requirement of joint and several
7 liability for worker's compensation obligations. That
8 requirement is there for a reason.

9 You need to know what's in this rule. You need
10 to comment on it. You need to know the cost involved in
11 loss control, and this rule requires the exercising of
12 skilled judgment from personnel, informed judgment.
13 Failure to do this will create inequities far beyond
14 those that we're trying to cure and bring additional
15 misuse. We are attempting to create safeguards through
16 the performance council. Your representatives protect
17 against abuse and improper judgment.

18 Successful implementation also brings some
19 benefits. The most significant of that is the
20 opportunity for West Virginia companies and their
21 employers to share what's happening all across the
22 country. Everywhere where workers' comp has been a major
23 issue in this country, there are stories and examples of
24 successes where employers and their employees, working

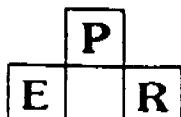


1 together, have prevented injury, have reduced their
2 workers compensation cost, and have shared those
3 benefits. This rule encourages the development as such
4 successes in this state.

5 Andy mentioned we have 70,000 claims a year.
6 That is a consistent pattern. If prevention of injury
7 reduces those claims by ten percent, 15 percent, 20
8 percent, this system becomes financially sound. It is a
9 fundamental root cause of what's driving your rate.
10 Those kinds of reductions in injuries are being
11 experienced all across the country and these are the
12 types of programs.

13 Another benefit is, a more financial sound
14 workers compensation system benefits us all. The workers
15 compensation system is part and consolidated with the
16 state's financial statements and is included in the
17 development of the state's credit rating. The more we
18 improve this system, the more positive of an impact we
19 have on that credit rating; the more positive impact we
20 have the credit rating, the lower the interest charges we
21 pay when we borrow money in the market; the less your
22 income losses go.

23 Would you put Exhibit 3 back up? This is what
24 we started; create a framework to finance the workers



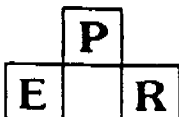
1 compensation system in the future; establish incentive to
2 prevent injury occurrence; charge those who are creating
3 the losses; reward those who are not creating losses.
4 Fundamental objectives.

5 This rule, the 61 pages -- or 64, is a
6 framework. We don't have all the answers. It is a
7 starting point. There are many many issues yet to be
8 addressed and we believe we'll address them as we move
9 through implementation, and a very careful implementation
10 growth.

11 We have a plan. We have an approach. We have
12 an idea. We think it will work. Evidently there are
13 other jurisdictions in this country that think it will
14 work also. I have now had over 20 inquiries from other
15 states that are going to use this as a basis to -- the
16 West Virginia approach to develop changes in their
17 workers comp system. It is the most comprehensive
18 financing approach that has ever been attempted in this
19 country, in workers comp.

20 We've got some questions that are kind of
21 standard and Randy's going to lead you through those. If
22 you have questions, please ask them when we're finished.

23 Thank you very much for coming. We appreciate
24 your interest.



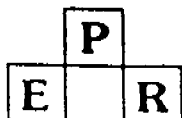
1 MR. SUTER: A nice crowd today, or at
2 least a large crowd. We'll see how nice you are here in
3 couple of minutes.

4 The first standard question that we always have
5 is, is there a Pam Hanson in the audience? We've had
6 this at every public hearing so far; is there a Pam
7 Hanson? If so, she has a phone message at the front
8 desk.

9 (No Response)

10 I guess not. During these last -- I guess
11 eight public hearings now, we've had a number of
12 questions and some of them were difficult to answer in
13 certain respects. So we sat back, we examined them. We
14 tried to come up with the answers that might help you
15 understand what we're trying to do.

16 For example, a small employer in Parkersburg
17 asked; gee, are you still going to require a million
18 dollar minimum bond in order to become self-insured?
19 That's preventing me from being self-insured. I can't
20 post that kind of bond and I want to be self-insured. I
21 suppose my first thought is, well, you can't post that
22 kind of bond, we don't want you to be self-insured;
23 number one. Number two, everybody in this room, you
24 don't want that person to be self-insured either. Number

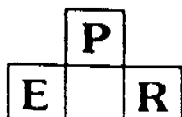


1 three, they wouldn't want to be self-insured if they knew
2 what type of headache it would involve with a small
3 employer doing that.

4 You might ask me why? For example, one severe
5 injury might rack up hundreds of thousands of dollars in
6 medical costs. I worked on a case recently where a
7 gentleman had a severe head injury; \$300,000 in medical
8 costs, and that doesn't count rehabilitation. That
9 doesn't count the fact that he'll probably receive a
10 check for the rest of his life as a result of this brain
11 injury. So that employer -- well, here's another example
12 for you.

13 I talked to a gentleman here not too long ago
14 who had had severe electrical burns on his hands,
15 necrosis set in, they had to amputate his hands. He has
16 gone through substantial rehabilitation. That's a
17 statutory permanent total disability award which he'll
18 get a check for, for the rest of his life. He has
19 prosthetic cost, he needs to have his hooks replaced from
20 time to time, and -- he has artificial hands.

21 You have a result like that and you have a
22 small employer who's not paying their share, proper share
23 of the premium into the fund if they are self-insured,
24 for example, and they have to file bankruptcy. They

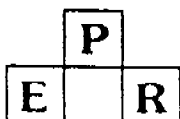


1 can't pay this person. Do you think the person gets paid
2 any less as a result of that? Benefits continue, that's
3 why workers comp was set up, it's to guarantee to workers
4 who receive benefits from industrial injury, the fund
5 pays. That's what it comes down to, the fund pays.

6 Who's the fund? Yes, you are. You know,
7 they're not going to take the shirt off of me and say,
8 well, this person went belly up and next week I get ten
9 bucks less in my paycheck. It's going to increase the
10 amount of rates.

11 You want us to do the best job that we possibly
12 can to help you, but that still doesn't help us with this
13 particular gentleman who's interested in becoming
14 self-insured. Maybe they do have good financials. Maybe
15 they just can't post this million dollar bond.

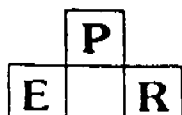
16 Well, there are alternatives. We have some
17 alternatives in this rule that they could utilize. For
18 example a deductible, a per claim deductible. Let's say
19 they don't have very many claims or the injuries aren't
20 that severe. They might have a couple of two or 3,000 or
21 4,000. Larger employers might have a \$20,000 deductible,
22 let's say for example, per claim. This will enable them
23 to self-insure a portion of the cost, so there are
24 alternatives that you can work with in this rule.



1 There's some other things with regard to
2 deductibles that seem to be common questions. Why is
3 this a reimbursable deductible? You might want to ask,
4 well, what is a reimbursable deductible? The fund will
5 pay the cost of the claim, and in turn will bill the
6 employer to be reimbursed.

7 Why is that? A couple of reasons. Number one,
8 it's to protect the employee. There are some employers,
9 I wouldn't think there'd be any in this room, but there
10 are some employers who won't pay. There are some
11 employers who may be stretched -- it might be a downturn
12 in their business cycle, might not be able to pay. The
13 fund has to pay, and we have to keep reimbursing it from
14 that individual.

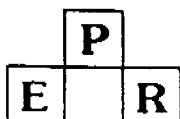
15 That sort of leads us to the next question:
16 Well, why are there security requirements for
17 deductibles? It's to guarantee to the fund, to you
18 people, that these cost will be paid by the employers
19 that have deductibles. There's going to be a range of
20 security requirements for deductibles. Obviously someone
21 with a very high deductible in a -- if they're in a poor
22 financial state, the cost of their security is going to
23 be much greater than someone with a very low deductible
24 that has good financials.



1 The next question is: When is this going to be
2 implemented? You've heard a little bit about how this is
3 going to be phased in, but we've heard both sides of it.
4 Mr. Staats heard the one comment from this area; hey, I
5 want it, I want it now, where do I sign up? You look at
6 the other side of the coin -- and we did have one comment
7 about delaying this over the course of time -- let's not
8 implement these changes this fast. Let's think six or
9 eight months, or a year in advance.

10 Well, we're going to phase in, but it's not
11 going to be November 1st, here it all is. We're going to
12 try to do it right. We're going to do it right. And
13 it's going to be over an 18 month period. Think of the
14 shock to the system of workers comp, it would be very
15 difficult to change the way you do business overnight.
16 Any of you know that.

17 I had an interesting question from a gentlemen
18 who said, hey, these changes in ratemaking, is this
19 going to effect my positive balance? I had absolutely no
20 idea what he was talking about. I should've. I thought
21 about it and I've figured out what he was talking about.
22 Is there any other insurance that -- you get your
23 automobile insurance for example -- where you think in
24 terms of a positive balance? No. We pay for the cost of



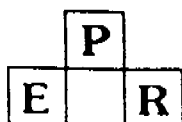
1 insurance for a period.

2 He was receiving a statement, here is what you
3 paid in, here is the cost that went out in this period.
4 We were miscommunicating and miscommunicated with him and
5 everyone else regarding the nature of insurance with
6 workers compensation. The reality is, you pay your
7 premium, you have your coverage for a period.

8 Another question that we have received from
9 time to time, if you breeze through this rule, 61, you'll
10 find that there is a \$500,000 aggregate premium
11 requirement for those who will joint briefs. The comment
12 was and we have heard, gee, that's a lot of premium so
13 we'll need to get a lot of people in there.

14 We are going to reexamine that. We took those
15 particular provisions regarding retrospective; from
16 Pennsylvania who is much different than the State of West
17 Virginia and we are going to revise those substantially
18 lower, so that you might have more of an opportunity to
19 participate in groups.

20 Another question is: Well, what period of time
21 will it be used for my experience rate? As the rule is
22 currently set up, it's a three year period and that's
23 pretty much what you're used to. We are going to examine
24 some changes in that particular time frame and probably



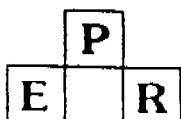
1 recommend some changes to the performance counsel.

2 We believe that the period of experience might
3 vary depending upon the nature of the risk of the
4 industry involved. So, some cases it might be a lesser
5 period, some cases it might be a greater period. There
6 may be a little bit of mischief that occurs as a result
7 of that and a question you might pose as well; what about
8 old claims outside this experience period?

9 What about those old claims? If they're being
10 litigated or capable of being reopened, and they fall
11 outside the experience period, isn't an employer likely
12 to stop fighting these claims? Well, that's true. In
13 some instances an employer may walk away from the cost of
14 litigating a particular claim, but I'd like you also
15 consider the following: One, there is a limited universe
16 of such claims, although it is a very large universe.

17 Two; and I pose this as a question: In what
18 percentage of those claims are employers currently
19 represented anyhow? I don't know if you routinely hire
20 folks to fight your workers compensation claims-- some of
21 the larger employers do.

22 Three; self-insured employers will continue to
23 litigate the claims that are filed against them because
24 they're experience; three won't be quite the same.

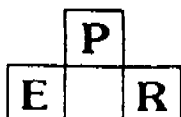


1 And four, the worker's compensation division in
2 cooperation with them through the office of the Attorney
3 General, we have a claims litigation staff on-board that
4 actively fights in defense of the fund in particular
5 instances. If this would end up being a problem then you
6 would hope that the division would act accordingly, and
7 that aspect would be enhanced or bolstered in some
8 respect.

9 And the last question that we've heard a couple
10 of times; well, what's the division doing to help reduce
11 my premium costs? Number one; how are claims handled?
12 Our claims are handled in a more efficient manner now.
13 It's not perfect but it's more efficient. There are
14 claims teams, assigned to geographical areas, to look at
15 the claim from the beginning to the end.

16 It used to be an assembly line procedure where
17 the claim would come in, compensable or not compensable?
18 Put the stamp on it, send it on to the next person who
19 may be part of another area; send it on to the next
20 person; send it on to the next person. Is there a
21 medical question? Send it on to the medical unit. Is
22 there other types of -- we just send it on. It just goes
23 from one person to another.

24 Now there are teams that handle the claims from



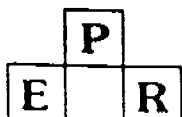
1 beginning to end. I believe we're getting a lot more
2 positive response from the employers as to how they are
3 being handled, and from the claimants also.

4 Workers compensation has taken a more active
5 role in the investigation of it's claims, of employers.
6 There are a lot of employers out there that do not pay.
7 They try to avoid paying and every time they're
8 successful they have impact.

9 We have an investigative staff and we also have
10 a prosecutor on board now and a state trooper that's
11 assigned to West Virginia workers compensation. And the
12 former prosecutor of Monongalia County also work for
13 workers compensation.

14 Workers compensation is attempting to promote
15 safer workplaces. You've heard a little bit about that.
16 There are two other rules that go hand in hand with this
17 particular rule. One is called the loss prevention
18 ruling. It's a mandatory program for employers with poor
19 workers comp experience; that they will have to implement
20 a particular kind of safety program. That's number one.
21 Number one:

22 Number two; if there is a qualified loss
23 management program, that informs particular employers
24 that they receive a credit on their cost of their



1 premiums in return for implementing a particular type of
2 safety program that's approved by the state. You may
3 want to take a look at that, that might help underwrite
4 the cost of a safety program in your facility.

5 Number four, we're developing this rule also,
6 so that those responsible for the cost of the system will
7 be the ones ultimately responsible for pay.

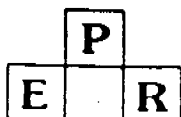
8 I would suggest one thing. I want to remind
9 you, please fill out the survey that you have. I chased
10 somebody down a hallway in Barboursville, they probably
11 weren't real happy about that. Begging is an ugly thing,
12 but please fill it out.

13 With regard to questions and answers, we're
14 going to open it up for questions and answers. I have a
15 couple of suggestions. This is not the public comment
16 portion, so what I'd like you to do is identify yourself
17 clearly and state your name and your affiliation. It's
18 being transcribed by a court reporter.

19 Another thing is, please, no six part
20 questions. By the time I figure out what the first one
21 is, you've gone on to five more. It leaves me in the
22 wake, so please -- ma'am?

23 MS. COLE: I'm Huntley Cole. I'm --

24 MR. SUTER: Would you stand up please



1 and you will have to speak up a little louder.

2 MS. COLE: I have a very simple
3 question.

4 THE REPORTER: I didn't --

5 MR. SUTER: I'm sorry, she didn't
6 get your name.

7 MS. COLE: Huntley Cole. Do you
8 have a directory for all these services with phone
9 numbers?

10 MR. SUTER: A directory for services?

11 MS. COLE: Or something with phone
12 numbers, so that if we have questions we might be able to
13 call someone who can give us an answer. Have you ever
14 tried to call workmens comp and get an answer?

15 MR. SUTER: It's been a long time.
16 My phone number is on the rule.

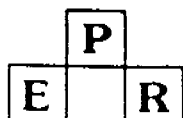
17 SPEAKER: Your home number?

18 MR. SUTER: No, not my home number,
19 my phone number.

20 THE CHAIRMAN: Randy -- if you'll
21 leave your name and address we'll call you, okay?

22 MS. COLE: It's really hard to get
23 through to workers comp.

24 THE CHAIRMAN: Yeah, we tried to do



1 that and we couldn't do it.

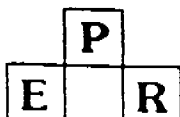
2 MR. SUTER: I think you saw the very
3 first employer handbook that was done about 18 months
4 ago, and we tried to do that for employers in that
5 handbook, and it may not have been comprehensible enough.

6 THE CHAIRMAN: Yes sir, would you
7 stand up and state your name please?

8 MR. GRINER: My name is Lee Griner,
9 I'm the treasurer and secretary for Rich Hill Farms and
10 Orchard, Inc.; my understanding is that companies who
11 have multiple classifications are classified as the
12 highest classification. For instance, I'm in the farming
13 business; I have people who are sales people, people who
14 work the fields and people who may be truck drivers and
15 I'm of the opinion or understanding that I assume, for
16 all those employees, the highest classification that
17 occurred -- let's say, if my truck driver is the highest
18 classification, then my sales people are also assessed at
19 that classification.

20 My question is; in this reform will there be an
21 accommodation to recognize those kinds of multiple
22 classifications within one company?

23 MR. SUTER: As the rule is currently
24 structured, there is what is known as a unified

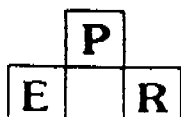


1 classification system. Where we assigned one
2 classification to a business -- the highest
3 classification consistent with their business operation,
4 which may be a little different than -- let's say you
5 have one -- you have a particular operation, you're
6 moving in a certain area with your business, and over
7 here you have one employee that is at a much higher risk,
8 that does not necessary mean that everybody is going to
9 be assigned to that risk.

10 Number two: there are certain instances where
11 multiple classifications are allowed in this rule.
12 However, be careful what you wish for, because if it
13 comes to pass that you end up with multiple
14 classifications -- there have been employers who have met
15 the guidelines to have more than one class, they're
16 separate and distinct portions of their operation --
17 they're assigned multiple class and they find that their
18 rates go up.

19 Why is that? It's because the amount of their
20 payroll for their higher classification is lesser now;
21 there is less money in this classification over here
22 which means that they have claimed the mod factor, the
23 multiplication factor may go up, so that has happened.

24 Anything else?



1 **MR. GRINER:** So what was the answer?
2 Yes or no?

3 **MR. SUTER:** The answer is that there
4 are instances where multiple classifications can be
5 allowed in this rule; however, the rule is set up to be a
6 unified classification system in the bulk of -- let me
7 answer this way; if there is some reason why you think
8 that that should be otherwise, then I would think that it
9 would be a good idea for you to address in the written
10 comments or your oral comments.

11 **MR. GRINER:** The way I understood
12 what you say is; yes, a little bit, but no, a lot.

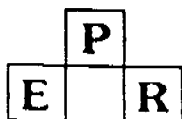
13 **MR. SUTER:** Yes, that's correct.
14 Other questions?

15 **MR. TABB:** I'm Robert Tabb --

16 **COURT REPORTER:** I can't hear his
17 name.

18 **THE CHAIRMAN:** You need to speak up
19 sir and state your affiliation; she can't hear you.

20 **ROBERT TABB:** Robert Tabb, Town and
21 Country Nursery. I've had problems for years of getting
22 in touch with people in Charleston. What I want to know,
23 and this stuff sounds great, but are the same people
24 going to be running the program now that were running it



1 before? Who's going to be accountable when this thing
2 screws up?

3 I pay 11 percent -- 10.99 percent for every
4 dollar I pay in payroll. I've had about four claims, a
5 total of \$1200; I've paid about one percent -- one
6 percent paid back from the fund for my claims. I average
7 \$100.00 a year in claims, and I average payment is
8 \$6000.00 in premiums, and I'm just fed up with it.

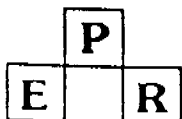
9 MR. SUTER: I can't answer your
10 question. Are the same people going to be there running
11 the system? Many of the same people will be there.
12 However, I believe that --

13 MR STAATS: I think the commissioner
14 want's to address that.

15 MR. SUTER: Okay.

16 THE COMMISSIONER: One of the -- one
17 of the items I mentioned earlier; first of all I can give
18 you an hour or two on the problems that workers
19 compensation experience, this deficiency we've had, the
20 redesign of operations, new computer systems,
21 retraining, all of these different things that have been
22 done to make it work differently and be more responsive
23 to you.

24 You know, one of the basic tenets in government

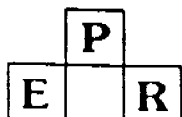


1 is, is that you really have to work with what you've got.
2 And we're trying to do that. We have done an awful lot
3 of training in the past two years to change things. Now,
4 that's not enough, and you heard me mention in my remark
5 that we do not have skills in place to accomplish many of
6 the goals that are outlined in what you have heard this
7 morning. We will be recruiting and attracting new and
8 different skills to our organization in order to deliver
9 a better product.

10 The answer is, some of the same people are
11 going to be involved in this, but many of the new
12 initiatives are going to require new and different skills
13 in each.

14 **MR. TABB:** Just to follow-up on that.
15 I've called and called and called. The last time I
16 called, I said, why am I paying this exurbanite rate, and
17 the answer that I got is, you have coal mines. I said
18 no, I'm not a coal miner. But you know, to sit there and
19 tell me that I've got a good rate at 11 percent, that
20 person -- they're not paying it. I'm tired of paying for
21 somebody else's mistakes. I'm hoping that something
22 positive is going to come out of this hearing.

23 **THE CHAIRMAN:** I want to apologize
24 for that callus type of reaction that you received from



1 my employees. That is unsatisfactory as far as
2 management is concerned. As far as -- and it has
3 happened far too often. I want to also say that I get a
4 lot of comments about folks going the extra mile to try
5 to help out an employer, try to respond to the needs of a
6 claimant, to try to be customer friendly and responsive,
7 so everybody realizes that, you know, you don't always
8 get that flippant kind of remark. It is absolutely
9 non-excusable and reprehensible that that happened
10 towards you.

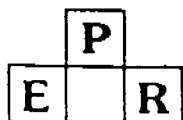
11 What I would like to do is, maybe, if you and I
12 could spend a couple of minutes together after the
13 meeting I would like information, particularly about your
14 account so that we can look into it, get to the bottom
15 line for you and give you the answer that you deserve.

16 **MR. TABB:** That would make me very
17 happy.

18 **THE CHAIRMAN:** Yes, sir.

19 **MR WRIGHT:** My name is Bill Wright, we
20 operate for Hardee's Restaurants in this area. It
21 doesn't have to do with the rule but we've run into a
22 couple things that I would like to ask about.

23 **THE CHAIRMAN:** Well, are things
24 specific with regard to particular cases?



1 **MR. WRIGHT:** Yes. Well, no, they're
2 done with. They're done with. Things that have happened
3 to us in the past that I think you should be aware of is
4 basically it. We've had doctors -- an employee goes to a
5 doctor for a problem, we've had doctors ask where it
6 happened; we've had this happen twice now in the last
7 several years. An employee will say at home and the
8 doctors will say, it looks like a workers comp claim,
9 hand them a form and send them to us for --

10 **THE CHAIRMAN:** Those things definitely
11 need to be reported. As I indicted we have --

12 **MR. WRIGHT:** Who do we report it to?

13 **THE CHAIRMAN:** We have a fraud unit,
14 investigative unit at worker's comp.

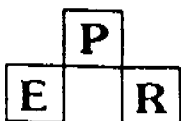
15 **ED STAATS:** Will you be here after
16 this?

17 **MR. WRIGHT:** Yes, then you could tell
18 us.

19 **ED STAATS:** Because anybody here, if
20 you care to comment, and we will pursue them.

21 **THE CHAIRMAN:** If you have matters
22 with regard to individual claims or incidents that have
23 occurred to you, we'll be here.

24 **SPEAKER:** One point I'd like to



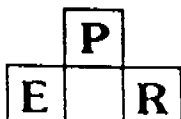
1 make --

2 **THE CHAIRMAN:** Ma'am, you need to
3 state your name and your affiliation.

4 **MS. BROWN:** I'm Coralee Brown. What
5 happened is that -- like you said, you go to the doctor,
6 the doctor automatically gives him the requirements; what
7 is workmens comp is willing to do to help us with this
8 doctors situation that we have as employers, because in
9 West Virginia in particular, and I'm not taking a shot
10 for this -- West Virginia, in particular, because we do
11 business in Virginia and Virginia has an insurance fund
12 that we pay comp into. It seems like that they are more
13 apt to put an injury or a sickness on the comp in West
14 Virginia than they are in other states and my question
15 is, is West Virginia going to do something about that
16 situation because it's been regulated in Virginia?

17 **THE CHAIRMAN:** Okay. Again we have
18 undergone some major changes at the fund with regard to
19 how claims are handled and that is resulted in a lot of
20 positive feedback from employers and the employees. If
21 you have specific instances with regard to -- are you
22 saying is there any initiative underway with regard to
23 reducing to these types of claims?

24 **MR. WRIGHT:** Yes, that's the



1 question.

2 **THE CHAIRMAN:** There have been
3 initiatives undertaken; the Senate Bill 250 that allowed
4 us to develop this particular rule with regard to
5 employers and their accounts. Also created many changes
6 with how claimants matters are handled.

7 **MR. WRIGHT:** So how are we to respond
8 to --

9 **MS. BROWN:** The phone number, you
10 know, like the lady said.

11 **MR. WRIGHT:** We've written letters
12 along with the claims that say we don't think you can
13 justify a claim. Apparently they just get stamped and
14 paid anyway.

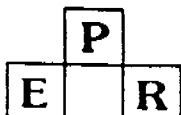
15 **MS. BROWN:** Exactly.

16 **THE CHAIRMAN:** Have you talked to a
17 claims manager with regards to the claims you're dealing
18 with?

19 **MR. WRIGHT:** Who are we to talk to?

20 **MS. BROWN:** Yeah, we know the name
21 that West Virginia comp had in the fraud division --

22 **THE CHAIRMAN:** But you will please
23 leave your name and your address and we'll have -- the
24 geographic area is assigned to the various teams sent to



1 you. Any other question? Yes, sir?

2 **MR. VAN:** Michael Van with Jefferson
3 Distributors.

4 **COURT REPORTER:** The last name?

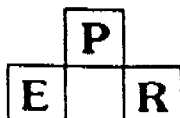
5 **MICHAEL VAN:** Van. V-A-N.

6 Regarding the group retrospective rating plan that talked
7 about officers and employers with the same
8 classifications. My question is, how do you develop a --
9 in other words, if I'm an original distributor and I get
10 my brother Richard to manufacture together, do I apply
11 the two compensation bureau and say, here we are, we want
12 to be a group? That's my first --

13 **THE CHAIRMAN:** Yes, you would have
14 too. We need to develop an organization -- first, a
15 responsible organization. Many groups have such
16 organizations; there are automobile dealers, retail
17 gasoline associations, those types of things.

18 **MR. VAN:** My second question
19 regarding that is, who, from that point -- once that
20 responsible organization is created, who, from that point
21 is charged with the additional employers who are farmed
22 to that group?

23 **THE CHAIRMAN:** For your purposes, once
24 your plan would start, no additional employers would come



1 into that group until the period was over.

2 MR. VAN: Okay. So --

3 THE CHAIRMAN: There would be process.
4 It would be extremely difficult to calculate rates when
5 you have a change in the pool all the time, so once a
6 pool is established, that pool stays the same for a
7 coverage period, whatever that might be. Then, upon
8 renewal, you might be able to bring some other people in.

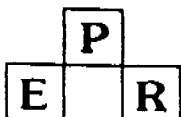
9 MR. VAN: Okay. Okay. Well, that's
10 great because I guess I was confused by the way it was
11 written, it says officers to employees under the same
12 classification.

13 THE CHAIRMAN: Well, approximation
14 means with classification that it was assigned to every
15 employer. Recently -- there are some numbers that are
16 generally stuck on the bill and they recently put a
17 little bit more wording to it, to tell you what
18 classification you're in. If you recall, I believe Ms.
19 Ranson said -- did you say one-third?

20 MS. RANSON: About one-third.

21 THE CHAIRMAN: About one-third of
22 employers are misclassified. You will be sharing with
23 people in the same classification as yourself.

24 MR. VAN: I'm satisfied. Another



1 question that I have, if I were to toss my business aside
2 and to go into the group of prospective ratings, then I
3 would be obligated for that plan for that period; I don't
4 have the option of --

5 **THE CHAIRMAN:** As I pointed out --

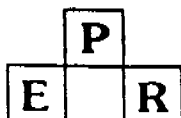
6 **MR. VAN:** Right.

7 **THE CHAIRMAN:** Because there are
8 instances -- this is the way for a large group to spread
9 the risk --

10 **MR. VAN:** Right.

11 **THE CHAIRMAN:** -- amongst themselves.
12 You don't want a situation where -- let's say you have an
13 administrator that has just filed a claim, we're beating
14 him out; this guy had a claim, or he had three claims,
15 we're kicking him out; no, it's a share the risk kind of
16 thing. Everybody needs to do it without looking every
17 else's shoulder. You're going to have to get involved,
18 and there are significant safety features across the
19 industry and there are probably going to be a lot of
20 trust between -- there has to be a lot of trust between
21 the members of the group.

22 **MR. VAN:** And that kind of -- that
23 answers part of it but the reason I have been drawn to
24 this area -- if I'm a widget maker and I know all my

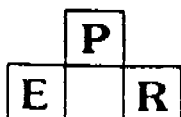


1 fellow widget makers in West Virginia, and I have
2 somebody from out of state who decides to come in and
3 make midgets and we know that that is not somebody we
4 want in our group, but they're going to be offered, if
5 they want to join a group, they're going to have that
6 option at some point.

7 **MR. CHAIRMAN:** You are going to have
8 an administrator that you can go out with. I mean, you
9 don't want to share the roost with everybody.

10 **MR. VAN:** Exactly. That answers my
11 question. My last question is from the pie chart which
12 was shown earlier, which showed benefits paid,
13 administrator costs and debt reduction cost. I am
14 curious to know if that charge is consistently accurate?
15 it looked to me like 90 percent of all the money going
16 towards claim payment, five percent was going toward
17 administrator cost and five percent -- and again, I'm
18 estimating by the size of the pie.

19 **THE CHAIRMAN:** I would say that that
20 is a reasonable estimate because that is a question I
21 had. Is this an accurate pie chart, and I believe it was
22 his impression that somewhere between five and eight
23 percent were in those categories; deficit reduction and
24 administration expense being accurate.



1 MR. VAN: My final question is --

2 MR. CHAIRMAN: Wait a minute, you said
3 final question a minute ago.

4 (Laughter)

5 MR. VAN: My final question is, has
6 anybody done a financial projection on an optimistic time
7 frame that the debt reduction --

8 THE CHAIRMAN: I will let our chief
9 financial officer answer that one.

10 MR. STAATS: The financing plan is
11 based on 40 year reduction.

12 MR. VAN: Forty years.

13 THE CHAIRMAN: We are in the 38th
14 year.

15 MR. STAATS: Yes, we have 38 left.

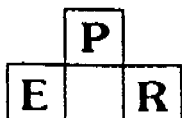
16 MR. VAN: Thank you very much.

17 THE CHAIRMAN: Yes, sir. Are there
18 other questions? Yes, sir?

19 MR. EPPS: Thad Epps, whatever
20 happened to the auditors? Those that don't take in, are
21 they adequate --

22 THE CHAIRMAN: Well, as Ms. Ranson
23 indicated -- I guess your question is two parts. One --

24 MR. EPPS: Who needs the auditors



1 every year?

2 **THE CHAIRMAN:** Do we have an auditing
3 function at workers compensation through investigating
4 officers? Yes. Is it adequate? Absolutely not. That
5 is why we are going to contract people as Ms. Ranson
6 indicated over the course of 18 months, and hopefully
7 they will 4500 largest employers, with 85 percent of the
8 premium paid into workers comp to be audited. Does that
9 fairly --

10 **MS. RANSON:** Right now we have about
11 five people for 40,000 employers. If they worked all the
12 time they couldn't get to the 40,000.

13 **SPEAKER:** What happens to a claim?

14 **MS. RANSON:** That kicks into an
15 automatic audit, where someone is sent out. If it kicks
16 in and the business is not on our list of policy holders
17 for the claim where that individual works, then it does
18 kick automatically out for an audit.

19 **THE CHAIRMAN:** You know, workers
20 compensation in the past, ten or 15 years, is the best to
21 have. There has not a been a good field audit program.
22 That is what I was talking about you're paying for poor
23 management. That's an example of that. That's part of
24 the reason of these receivables have been allowed to

1 spawn and collect.

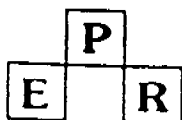
2 **SPEAKER:** The reason I am saying it,
3 I got audited.

4 **THE CHAIRMAN:** I'm saying that in the
5 past ten or 15 years, that program has not been managed
6 well. Yes, sir?

7 **MR. HOFFMAN:** Mark Hoffman with Syntex
8 Construction, and my question is -- about the cost
9 reduction for the loss control program and the
10 consultants and all. I'm just wondering how that applies
11 to covering the corporations with a professional staff?
12 Is that something -- is that firm taken up to hire
13 someone else to do what they can already, have on staff?

14 **THE CHAIRMAN:** Okay. There are a lot of
15 ways I suppose that we could address your concerns.
16 Number one, as the rule is being proposed, obviously the
17 performance may make some changes in it; there is a
18 minimum factor for persons qualified. We want to get to
19 those people with bad experience factors first. If you
20 have, on staff or have an association with a safety
21 provider and your mod factor is still very high, then
22 there's probably something wrong with that process.

23 The division is going to qualify service
24 providers, probably through a RFT profess, and we're



1 going to have an organizations that will provide these
2 services for you. Does that --

3 **MR. SUTER:** Let me just hop in real
4 quick too, as well. If you had a risk management in
5 place, chances are you're doing a good job of reducing
6 your own, and in the new regulating system, you are going
7 to be rewarded for your own. The QRFT is more designed
8 for folks that need some help reducing their losses, and
9 the credit is going to help to cover the cost of that,
10 but the credit is also going to be a function of their
11 ability to reduce losses, so it's kind of a win-win
12 situation. But it sounds like a situation where a risk
13 management program already exists.

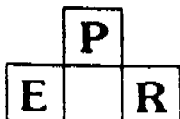
14 It's really not relevant because in the new
15 ratemaking system, you're going to get the reduction
16 because you are reducing your losses. Does that answer
17 it more?

18 **THE CHAIRMAN:** Yes, sir?

19 **MR. CAMBEY:** My name is Garnett
20 Cambey --

21 **THE CHAIRMAN:** Garnett Cambey.

22 **MR. CAMBEY:** I just have a few
23 comments. My question, I read in the paper and I've
24 heard you mention, that companies are not paying



1 compensation. Now, here's -- answer this question. If a
2 company has a business in West Virginia, he has employees
3 and doesn't pay any compensation, compensation is not
4 responsible for those employees, is that right?

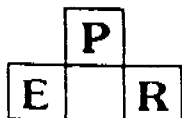
5 **THE CHAIRMAN:** That is incorrect.
6 What happens is, the employer has an employee. The
7 statute that sets up workers compensation indicates that
8 those employees are covered, regardless of whether or not
9 an employer ever pays in nickel one. What happens, in
10 many instances, let's say this employer, not a good
11 employer has never paid into the system. More than
12 likely he has committed a felony; number one, and as I
13 said our prosecutorial staff has been enhanced recently.

14 **MR. CAMBEY:** Please. I've been
15 paying into it, 40 years ago, and I started into it
16 because a good friend lawyer, he said, Garry, you want to
17 help someone get hurt --

18 **THE CHAIRMAN:** Sir --

19 **MR. CAMBEY:** -- you'll be paying in
20 and you'll be in prison the poorhouse the rest of your
21 life.

22 **THE CHAIRMAN:** That's right. That's
23 right. However, let me put it this way, workers
24 compensation coverage in West Virginia has only been



1 mandatory, I believe, since 1974. Now it is mandatory.
2 We do pay for those employees who are injured, where the
3 employer has not paid into the fund. We take other
4 action against that employer.

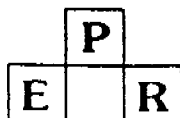
5 **MR. CAMBEY:** The other thing, I don't
6 understand enough about this system to -- and I'm afraid
7 to shame you because --

8 **THE CHAIRMAN:** We are not trying to
9 pigeon toe -- we are not trying pigeon anybody in this
10 particular plan under this survey. We are just wanting
11 to get an idea of what you are thinking about, and that
12 is very helpful to us. Anything else? I'll tell you
13 what, I'll come in Martinsburg and ask your questions.
14 This is our meeting now, and I think --

15 **MS. HARMON:** I'm Joan Harmon. Has
16 anybody yet gone to jail for not paying workers
17 compensation, and if not, why not?

18 **MR. SUTER:** There have been numerous
19 indictments handed down. As far as anybody bars at the
20 moment, I don't know who. 135 indictments, if I'm not --

21 **THE CHAIRMAN:** Would you explain the
22 process with the Kanawha County prosecutors office and
23 myself on setting up a prosecutor? We have state police
24 on staff now. You know, we have prosecuted people; I



1 don't know if any of them have actually gone to jail.
2 People have gone to jail over the years for claim related
3 fraud, and in some instances, a couple of instances,
4 employer related fraud and a vast number for medical
5 billing fraud, but under the new initiatives that we have
6 taken, beginning in January of 1996, quite candidly I
7 don't think anyone has actually been imprisoned yet
8 because of -- there's just not been enough time for that
9 of activity to happen.

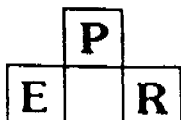
10 Yes, sir?

11 **MR. HOFFMAN:** I'm Mark Hoffman. I
12 have comments about not paying off -- is there a way, has
13 state workers tried to find verification of payment, of
14 workers comp share to their business license or their
15 state taxation that they're required to pay? Some kind
16 of a double-check --

17 **THE CHAIRMAN:** Yes, sir.

18 **MR. HOFFMAN:** -- so those people
19 don't fall through the cracks until it's too late,
20 somebody gets hurt or you find out that person hasn't
21 paid for five or six years.

22 **THE CHAIRMAN:** We do, routinely,
23 check other systems for verification. That's done.
24 However, as Ms. Ranson pointed out earlier, we can't do a



1 lot about it until somebody raises the red flag. Are we
2 doing independent checks all the time, to see that data
3 bases match up, I'm not sure.

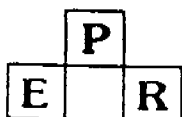
4 **MR. SUTER:** When someone raises the
5 red flag, that's when the date bases are compared. We --

6 **THE CHAIRMAN:** Let me make a comment,
7 if I may.

8 **MR. SUTER:** Sure.

9 **THE CHAIRMAN:** One of the folks here
10 today is our eyes and ears in the Eastern Panhandle on
11 employer account issues, Nancy Bowers. Nancy, would you
12 stand and be recognized? Nancy works for the workers
13 compensation division in the area of employer issues on
14 taxes and account matters. She is located over in
15 Berkeley Plaza -- does everybody know where Berkeley
16 Plaza is? It's the same offices where the unemployment
17 compensation is housed.

18 If you are aware of firms that you feel are not
19 participating correctly in the workers compensation and
20 you need to bring that to our attention, call Nancy. Or
21 if you have other issues that you want to bring up, call
22 Nancy. She does work in the field, Thursdays are her
23 office hours, Thursday morning; and her number is
24 267-0080; 267-0080, and I really think that is probably



1 the best way on some of these thing that we are getting
2 into now, because if you've got a question or a concern
3 that you want to raise about another company not
4 participating or things of that nature, we need to know
5 that and we can channel that on to the appropriate folks,
6 both here and in Charleston. They can look into it.

7 We have a few more questions and we need to
8 move onto the public hearing part of the process, but I
9 don't have anybody wanting to testimony, so Randy, you go
10 right ahead.

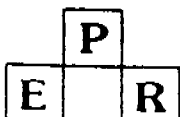
11 **MR. SUTER:** There's one question.

12 **THE CHAIRMAN:** Yes, sir?

13 **MR. WHITTINGTON:** Calvin Whittington
14 with the library corporation. In response to what you
15 said -- I understand that if you know about it, or if
16 they're out bragging about it, that they're not paying,
17 you should be responsible for turning those people in.

18 We have a rather -- employers have no business
19 knowing whether this individual is paying their workers
20 comp. If you're saying that new computer system -- the
21 state ought to be looking at the unemployment, the income
22 tax and combining them altogether to see whether people
23 are paying or not.

24 **THE CHAIRMAN:** And that is happening.



1 That is a direction that we're moving in; it's a more
2 comprehensive enforcement, but I'm not going to stand
3 here and tell you, oh yeah, that's going to be a
4 fail-safe system. It's not. And we need your help too,
5 because I know -- I know that there are firms that
6 compete fairly and you then learn of another firm that is
7 not competing fairly, and we need to be aware of those
8 types of things. That's all I'm saying.

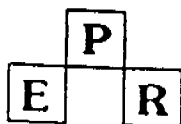
9 MR. WHITTINGTON: I understand, but it
10 can't be --

11 THE CHAIRMAN: We -- I mean, we --
12 yeah, we're working the matrix of technology to identify
13 different firms that may be employing people and not
14 reporting appropriately.

15 SPEAKER: If you know of somebody and
16 try to report somebody, and maybe they're not guilty --

17 THE CHAIRMAN: Well, you know, we'll
18 take an anonymous -- we'll take the information
19 anonymously and we'll look into it. Quite frankly,
20 let's also be honest with ourselves, the scuttlebutt that
21 gets circulated in a community sometimes is just not true
22 and in fact, the person is competing appropriately.

23 MR. WHITTINGTON: I have one other
24 question. In the ratemaking, rezoning, redoing the



1 ratemaking and so on, are the people that want to stay
2 under the current system going to be compensated for not
3 having claims?

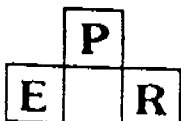
4 MR. SUTER: You mean under the
5 current plans?

6 MR. WHITTINGTON: Yeah.

7 THE CHAIRMAN: Guaranteed costs.

8 MR. SUTER: Yeah, the ratemaking
9 system is, in theory, it kind of works along all the
10 different product categories; industrial, etcetera,
11 indicating guaranteed costs. There's a formula, the
12 foundation was skill based, and depending on the
13 industry, there's a certain expectation on how many
14 losses you will have, and then you have an actual amount
15 of losses, you compare the two, you're going to have
16 either somewhere below, somewhere that's right it or
17 something higher and the rate will be set accordingly.

18 The difference that comes in now is how big are
19 you, how much credibility, because if you are very small
20 you are not given a lot of credibility, because one loss
21 can wipe you out, so as a result around and that's the
22 reason why we would argue for the group, so the smaller
23 can come together and get a little bit more weight for
24 their own experiences.



1 **MR. WHITTINGTON:** Well, if you go
2 into the group, if the individual record thing is saying
3 that you a minimum of \$25,000 in premiums doesn't even
4 apply. This gentlemen over here was having -- was paying
5 11 percent and said he's only paying \$6,000.00 in
6 premiums, which is a lot for his size business, sure, but
7 he can't get into the individual ratemaking.

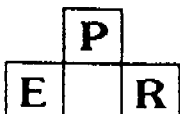
8 **MR. SUTER:** Right, and that's where
9 we have the groups. And the deductibles.

10 **THE CHAIRMAN:** The retrospective
11 premiums plans are how you do it, so you need to have
12 some minimal qualifiers so that you can somehow allocate
13 your resources.

14 **MR. WHITTINGTON:** One final question.
15 Why have -- why the \$2,500.00 application fee?

16 **MR. SUTER:** In some instances --
17 well, number one, it is tied to coverage, the
18 application, but there are certain -- you know, market
19 retros; in particular, in a lot of other type plans,
20 there are criteria, requirements, applications in place
21 so that there are accountants -- we have to bring
22 somebody in, or if we have to look at their financial
23 situation in order to make that determination, it's done.

24 **THE CHAIRMAN:** Yes, sir?



1 **MR. DEHAVEN:** My name is Kevin
2 DeHaven, just out of curiosity --

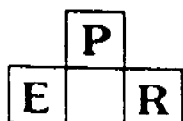
3 **THE CHAIRMAN:** I'm sorry, I didn't
4 hear your name. I don't know if the court reporter did
5 or not.

6 **THE REPORTER:** Kevin DeHaven.

7 **MR. DEHAVEN:** Kevin DeHaven; just out
8 of curiosity, was there talk of implementation to the
9 workers comp system on the state level? You talked about
10 the software, the new programs, hiring out auditors to
11 come in, new auditors.

12 **THE CHAIRMAN:** I'll take that. In
13 West Virginia, workers compensation administration is
14 financed solely through the employer premium. This is
15 not a general revenue appropriation. Now, I can tell you
16 that the cost of the administration of the system has
17 increased over the past several years, but it is an
18 investment in fixing it and making it work better.

19 The fact is, that when we were -- when we had,
20 like five percent or six percent of our premium base
21 being applied to administration, that probably was penny
22 wise and pound foolish, because industry standards will
23 show that, after profit and everything, that the average
24 insurance carrier across the country dedicates about 12



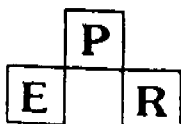
1 percent of premium to the administration of the workers
2 compensation insurance product.

3 What I'm saying is, the state fund in West
4 Virginia was underinvesting in the administration of it's
5 system, and it's probably part of the reason that we got
6 into the mess that we got into. A portion of your
7 premium package goes to the administration of the system,
8 and that's how that's financed.

9 MR. DEHAVEN: Will that in turn
10 increase the states rates? Initially?

11 THE CHAIRMAN: I -- well, I don't -- I
12 don't know. I mean, I think that you probably already
13 experience the increases in administrative investments
14 that are going to occur. For example, much of the
15 technology investment has occurred, and the
16 administrative budget is right around -- about 48
17 million. That's less than ten percent of our premium
18 base.

19 These things, while requiring other investments
20 -- there are probably going to be investments that are
21 going to be within that bundle of 48 million. Because,
22 you know, we invest six or seven million dollars in the
23 course of a two year periods in a new computer system.
24 Okay? Well, we've got that computer system in place;



1 that system is seven million dollars

2 You know, the important thing to understand is
3 that a well administered system is in everybody's best
4 interest and you know, to be incumbent upon us to invest
5 wisely, to use it right. It's sad, the old way of doing
6 things, simply said; keep the administrative real low.

7 They were spending about 14 million a year to
8 try to run this system, which was like four percent or
9 five percent of the revenue base at that time, and they
10 just asked for about a decade or more.

11 And you know, the reason you have a product
12 that was so poor and did not compare to the industry at
13 large, is because it did not invest consistent with
14 industry standards. That goes with whether it's
15 responses, the inability to develop an account receivable
16 system in the computer system or the poor excuse for
17 claims management.

18 MR. SUTER: We do need to get into the
19 public comment portion of this, so I'm going to step
20 aside and take your comments.

21 THE CHAIRMAN: Okay. Did you want to
22 say something, sir?

23 MR. CAMBEY: You may not like this
24 question, but -- Garnett Cambey -- I would like to know

1 how West Virginia compares with our neighboring states as
2 to the percentage of monies paid out from the
3 compensation commissioner compared to employees and
4 lawyers. How they compare. The lawyers get a
5 percentage, how that compares with other states.

6 **THE CHAIRMAN:** You know, Mr. Cambey,
7 I'm a lawyer. I don't know if you know that.

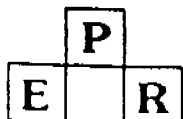
8 (Laughter)

9 But your question didn't offend me. I'm going
10 to tell you honestly that I don't know. I do know this,
11 that in West Virginia, in terms of the claimant
12 representation, a lawyer can make 20 percent of what he
13 recovers, up to a limit of -- I think in the equivalent
14 of 108 weeks in -- in other words, translated, 108 weeks
15 of what that person's benefit would be in representing a
16 claimant in a workers compensation case.

17 Now, we have no way to pry -- I mean, we have
18 some lawyers that are millionaires as a result of this
19 system.

20 **MR. CAMBEY:** It's not right.

21 **THE CHAIRMAN:** No, it is not right.
22 And we have no way to try to talk on the employers side
23 of the equation because, you know, that's paid directly
24 by the employer and that's paid as a, usually an hourly



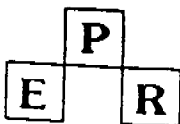
1 fee basis or a retainer basis, or something of that
2 nature.

3 I think it's horrible that this system,
4 established in, I believe 1913 in West Virginia has --
5 you know, before this system, when you had a -- when you
6 were hurt at your job, what you did was you sued your
7 company, you sued your employer.

8 Now, the whole reason of workers comp insurance
9 concept was developed, first in Germany in the 1870s and
10 ultimately in America and in West Virginia in 1913, was
11 so you didn't have to sue your employer. It was a
12 no-fault system. The whole concept was designed to avoid
13 conflict and avoid litigation, and yet, in contrast, in
14 our state, there's a lot of litigation. There's a lot of
15 conflict and it's true across the country.

16 It's not just true in West Virginia and I don't
17 have any comparable statistics on a state by state basis,
18 other than I call tell you, A; this reason is not as
19 litigious as -- for example, southern West Virginia, and
20 B; we've got folks that are millionaires thanks to the
21 claimants in the workers compensation.

22 MR. CAMBEY: We had a meeting about a
23 year ago, at the same place, and they gave me a figure of
24 about -- how much the lawyers -- I asked some of the



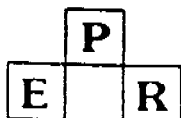
1 people from West Virginia Compensation in Charleston
2 about it, and this is what they said: There's a chance
3 for them to make some money.

4 **THE CHAIRMAN:** And we know that those
5 folks in the bar don't want to miss an opportunity to
6 make some money.

7 **MR. WRIGHT:** Bill Wright, and I just
8 want to thank you for you and your staff coming out here
9 today. I've been in business in West Virginia for 11
10 years, and I feel like it's the first time that we were
11 given some positive input of what's going on.

12 **THE CHAIRMAN:** Well, that concludes
13 the question and answer portion of the program and I want
14 to thank all of you today for being here. I'm now going
15 to declare -- open the opportunity to make public
16 comment. Only one person of the -- we had about 90
17 people here today, and you all should be real proud about
18 this. This is, after Elkton, the second largest public
19 hearing that we've held. Charleston had about 130.

20 Are you still interested in making some public
21 comments today? If you'd come up to the podium and state
22 your name and affiliation and make your comments.
23 Members of the Performance Council have the opportunity,
24 after those comments, to ask any questions. Okay?



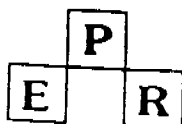
1 Thank you.

2 MR. TABB: My name is Bob Tabb or
3 Robert Tabb from County Country Nursery. I have been in
4 business in this state for 15 and half years; I have
5 grown-up in the Eastern Panhandle, I've lived here most
6 of my life and workers compensation has become a major
7 issue for me over the last several years due to the rate
8 increases.

9 As I stated earlier, right now I'm currently
10 paying 10.99 percent of my payroll, and I do account for
11 every dollar of my payroll, even though I'm paying far
12 more than I would like too; more than I feel like I
13 should be paying, but I'm pleased that the Performance
14 Board has put the effort into doing this hearing system
15 and values it's voice.

16 And I really hope, sincerely, that regardless
17 of how the administration changes in November's election,
18 that this will be implemented in a timely fashion and
19 that regardless of who our next governor is, that they
20 don't mess the system up, because I think it's finally
21 headed in the right direction.

22 I just hope that we continue to have these
23 types of informative meetings in the Eastern Panhandle
24 after this. That's a real problem, our physical



1 location. The state is beginning to talk to people
2 about the problems that we have. And I'm just thankful
3 for the opportunity to do this.

4 **THE CHAIRMAN:** Questions for Mr.
5 Tabb?

6 (No Response.)

7 Thank you. Thank you very much for those kind
8 words of -- and we will be back. I guarantee it.

9 **MR. SCHWARTZENAGAR:** I'm Mike Arnold
10 Schwartzenagar and I'll be back too.

11 (Laughter)

12 **THE CHAIRMAN:** I was kind of thinking
13 about Douglas McCarthy.

14 (Laughter)

15 I shall return. We have had seminars here,
16 often oriented toward medical claim issues. We have had
17 presentations with the Chamber of Commerce; I think the
18 Job Service Employer Advisory Committee has had
19 presentations on workers compensation, but clearly the
20 flow of information about policy initiative involving
21 programs such as this are not communicated effectively
22 enough to the panhandle community. I regret that and I
23 hope that in the future we do a better job of building
24 you folks into the loop.

1 Mr. Epps and I were just talking about that a
2 few moments ago, of our awareness today on how much you
3 thirst for more information about the things that are
4 going on.

5 Now, only individuals this morning who signed
6 up indicating a preference of making little comments this
7 morning; however, you now have had an opportunity to hear
8 the comments of the staff, to experience a question and
9 answer period, and I want to open the floor for the
10 opportunity -- if anyone would like to come forward, make
11 a public comment for the record, this is your opportunity
12 to do so. Would anyone like to step forward at this
13 time?

14 (No Response)

15 This is your chance. It's not every day you
16 get the commissioner in to take public shots at him.

17 **MS. CAVE:** I have a question.

18 **THE CHAIRMAN:** Yes, ma'am. Your name.
19 We need your name and affiliation, please.

20 **MS. CAVE:** Barbara Cave. I have
21 dealt with Ms. Byers through the office and she has been
22 very helpful. She's been more helpful than Charleston,
23 let me put it that way; and my question is why is it that
24 they don't take any premiums in now?

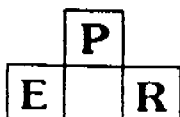
1 In '95 -- now, you have to mail -- well, now
2 they get mailed to Timbucktoo, but I had a problem with
3 workers comp which is, when I would bring my premium in
4 to there -- I always had my papers stamped the date I did
5 it, everything; that's the only thing that saved me from
6 somebody in Charleston that was very nasty, because I had
7 to send him copies of my paper being stamped and
8 everything, where I had paid my premium; where if I had
9 mailed it, I would have had nothing showing that I had
10 already paid it.

11 But he was very rude. I don't know his name, I
12 didn't write it down, I should have, but this happened
13 about a year ago.

14 I was comfortable with taking my payment into
15 the Martinsburg office; I was able to get my paper
16 stamped and everything, knew I paid it and it was paid.

17 **THE CHAIRMAN:** I am going to let Ed
18 address that; it has to do with internal control, checks
19 and balances and cash-flow type things. Ed?

20 **MR. STAATS:** Your's is an example of
21 how a better control may approach -- how to allow the --
22 how to get a centralized control of receipts, to better
23 manage those receipts. It's like you mailing into
24 Pittsburgh or Mass.;



1 MS. CAVE: Yeah, it was Ohio.

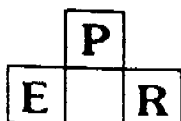
2 MR. STAATS: Well, there's a reason
3 for that. We asked the banks in West Virginia to
4 establish the outbox program for their computer systems,
5 to process those payments, and believe me, I, personally,
6 called the chairman of the board of two different West
7 Virginia based banks, saying why don't you do this; we
8 process almost six-hundred-million dollars a year, why do
9 I have to take it out of the state?

10 Their systems, their money transfer systems are
11 not set up in West Virginia to be able to handle that.
12 Well, that didn't make our needs to manage the
13 receivables better than it was. So we made the decision
14 that we had to go to Pittsburgh, at least until everybody
15 can bid again and there's an opportunity for a -- or a
16 West Virginia bank can process it.

17 It is my understanding that a bank in the
18 community -- in West Virginia, is moving more along those
19 lines. At least two of them.

20 MS. CAVE: Well, I know my son would
21 deposit it. I could take it to the bank.

22 THE CHAIRMAN: We had three bidders.
23 We had three bidders. Two were Pittsburgh banks and one
24 was an Ohio bank that had a branch in West Virginia, but



1 actually I don't think they met the qualifications of the
2 bid.

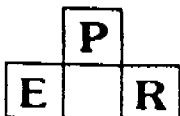
3 MR. STAATS: It has allowed us, that
4 step, has allowed us to accomplish such things as -- to
5 date, this fiscal year, our receipts are up over 20
6 million dollars over the last year.

7 That is primarily -- there are several factors
8 that drive that, but a lot of that is due to better
9 collection procedures and being able to better manage the
10 receivables. That's the result of some of those steps.
11 Now, we don't necessarily like what we have to do to get
12 those results; we think those results can be even better.

13 Once I've got the systems in place, then we can
14 begin to make changes where we might have local banks.
15 We're talking about the wire transfers, payments in our
16 presentations.

17 That is going to come, but it's not going to
18 happen until we have all the processes to better manage
19 those receivables. And it may very well be that one of
-20 these days you'll drive up to your bank and pay your
21 workers comp premiums. We can't get there from where
22 we're at right now.

23 MS. CAVE: That didn't bother me.
24 The fact that he was rude, that's what bothered me.



1 MR. STAATS: Well. that would bother
2 me too.

3 MS. CAVE: I mean, he was. He
4 was --

5 MR. STAATS: And it's inexcusable.

6 MS. CAVE: He was very rude. I
7 mean, he made me feel like I was doing something wrong.
8 I knew I had paid it, but he made me feel -- feel that I
9 hadn't paid it, you know, and I had to give him all these
10 copies and proof that I did. And I never -- and I never
11 received nothing back once he found out that I had.

12 MR. STAATS: And he didn't call?

13 MS. CAVE: No.

14 THE CHAIRMAN: Ma'am, again, I -- I
15 can not apologize enough for that. It's reprehensible.
16 I hear it too often, and I -- I mean, obviously we are
17 not going to always see things eye-to-eye from the
18 workers compensations perspective versus the employers
19 perspective, but that doesn't excuse rudeness; that
20 doesn't excuse unprofessionalism; that doesn't excuse
21 poor customer service, and there's a culture that we have
22 had to attack that obviously we have not been adequately
23 successful, and we will continue to try to impress upon
24 the people who administer this program that we work for

1 you.

2 MS. CAVE: Well, it's like I had a
3 delinquent on my paper every time. I wasn't delinquent.
4 Ms. Byers went into the computer and we sat in there and
5 she tried to get to get it straight, so there is nothing
6 in the computer saying that I was delinquent, yet when my
7 paper would come out, it would --

8 MR. STAATS: One of those -- I don't
9 know what it is --

10 MS. CAVE: It took nine months,
11 almost a year to get that off of there.

12 MR. STAATS: The rudeness is an issue.
13 It's a skill issue; it's a skill based issue -- what is
14 it now? How many years ago?

15 SPEAKER: Five years ago.

16 MR. STAATS: Five years ago that the
17 cultural effort was begun, which includes attitudes, the
18 skill base we have to go through -- we have made
19 substantial progress, but we haven't made enough
20 progress. I think as we change -- like some of the folks
21 that you saw here today, I would like to be able to say
22 the skill based issues are managed by the people that in
23 it's presentation are throughout the conference, well
24 that's not true. It just isn't true. The base, the

1 skill base is not there.

2 That is -- one; in order to bring you these
3 kinds of programs, that is something that we have to
4 overcome, because, like I said, you are paying for bad
5 management just like you pay for good management.
6 And -- you want the bad management, you want good
7 management? We think you would like to have some good
8 management.

9 MS. CAVE: For a change, yes.

10 THE CHAIRMAN: Okay. We have gone far
11 longer today -- let me just say thank you for the
12 compliments about management.

13 MS. CAVE: If I have a problem, I
14 yell for her.

15 THE CHAIRMAN: I hear lots of
16 compliments. Thank you.

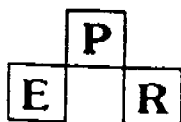
17 Any final -- would anyone care to make public
18 comment? If not, once again, I want to thank you all so
19 much for coming today. I hope it's been useful. I hope
20 it has been informative. I hope that you will study the
21 handouts and I hope that you respond with the testimony,
22 the survey.

23 Do any of the Performance Council members care
24 to add anything?

1 (No Response)

2 Thank you very much for being here. I declare
3 the meeting adjourned and I'm very grateful for your
4 input.

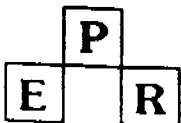
5 (WHEREUPON, the Public Meeting concluded at 11:55 a.m.)



C A P T I O N

The Public Meeting held in the above-styled matter,
at the time and place as indicated on the title page
hereof.

It was requested that the meeting be taken by the
reporter and that same be reduced to typewritten form.



CERTIFICATE OF REPORTER

STATE OF VIRGINIA AT LARGE:

I, AMANDA TURNER-LOCKE, Notary Public for the State of Virginia at Large, do hereby certify that the foregoing was reported by stenographic and mechanical means, which matter was held on the date, and at the time and place set out on the title page hereof and that the foregoing constitutes a true and accurate transcript of same.

I further certify that I am not related to any of the parties, nor am I employee of or related to any of the attorneys representing the parties, and I have no financial interest in the outcome of this matter.

Given under my hand and Notarial seal this

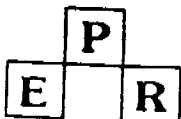
8th day of October, 1996.

My commission Expires:

Notary Public

April 31, 1999

Amanda Turner Locke



BEP-LEGAL DIVISION

ORIGINAL

96 SEP 20 PM 3:57

WEST VIRGINIA WORKERS' COMPENSATION DIVISION
BUREAU OF EMPLOYMENT PROGRAMS

RE: Public Hearing on
Rule 85 C.S.R. 9, "Risk Management"

Transcript of proceedings had in the
above-entitled matter held at the Glade Springs Resorts,
Glade Room, Daniels, West Virginia, on the 9th day of
September, 1996, commencing at 1:13 p.m., pursuant to
notice.

KARON L. VORHOLT
Certified Court Reporter
634 Pioneer Lane
Charleston, West Virginia 25312
(304) 984-1242

APPEARANCES: PERFORMANCE COUNCIL MEMBERS:

Thad D. Epps

Chris E. Jarrett

Fred Tucker

Everett Sullivan

Gene Bailey

ALSO PRESENT: ANDREW N. RICHARDSON, Commissioner
Bureau of Employment Programs

RANDALL B. SUTER, Counsel
Legal Division

Reporter's Certificate 64

1 COMMISSIONER RICHARDSON: Good afternoon. Thank
2 you all for coming today. This is the public hearing of
3 the Compensation Programs Performance Council regarding the
4 proposed rule entitled "Risk Management."

5 We've made substantial changes in the
6 ratemaking and underwriting system currently in effect in
7 West Virginia's Workers' Compensation system.

8 I want to thank each and every one of you
9 for coming today. It demonstrates the interest and
10 excitement that exists about this particular subject
11 matter.

12 My name is Andy Richardson. I'm
13 Commissioner of the West Virginia Bureau of Employment
14 Programs. I'd like to introduce the members who are with
15 us today of the Compensation Programs Performance Council.
16 At the far right end of the table, or your left, is Fred
17 Tucker.

18 The Compensation Programs Performance
19 Council is a nine-member body with four representatives
20 representing the interest of employees and four
21 representatives representing the interest of employers and
22 myself as the Commissioner of Employment Programs stuck in
23 the middle. Mr. Tucker is a representative of the coal

1 miners, having been affiliated with United Mine Workers of
2 America.

3 Next to him is Gene Bailey from
4 Consolidation Coal; Everett Sullivan, with the construction
5 trades; Thad Epps representing manufacturers and Chris
6 Jarrett representing the West Virginia Chamber of Commerce.

7 Unable to join us today is Paul Thompson
8 with the steel workers and Dick Humphreys who represents
9 the interest of workers generally.

10 I also would like to introduce Ed Staats,
11 the Chief Financial Officer of the Workers' Compensation
12 Division and Ed Burdette, who is the Chief Operating
13 Officer of the Workers' Compensation Division and Randy
14 Suter -- there he is -- one of our lawyers and a key person
15 on the legal staff in the context of writing these rules.

16 I also neglected to announce another
17 individual that is not here, David Harris, representative
18 of the employer community who represents the interest of
19 small businesses.

20 What we have traditionally had in West
21 Virginia is basically two types of Workers' Compensation
22 insurance coverage: individual self-insurance for each
23 individual employer and regular subscriber or affiliate

1 insured product where you pay the Workers' Compensation
2 Fund a premium every quarter and you get first dollar
3 coverage from that insurance program for any injuries that
4 occur on the job.

5 Senate Bill 250 enacted by the Legislature
6 in 1995 recognized that this severely limited our ability
7 to tailor the system to the needs of West Virginia's
8 workers and employers.

9 Consequently, Senate Bill 250 authorized
10 and required the establishment of a new underwriting and
11 ratemaking system for this very important insurance product
12 to all citizens of West Virginia.

13 These rules represent the combined effort
14 of a number of staff members, some consultative services
15 that the Workers' Compensation Division received and the
16 Finance Committee activities of the Compensation Programs
17 Performance Council.

18 Having said that, and I think it's an
19 excellent, excellent first flight. I think it's safe to
20 say none of us have any private authorship, and this public
21 hearing is the first of eight around the state where we
22 want to get your input and your feedback on how to make the
23 system work better.

1 Basically what you'll hear today is an
2 opportunity to have a variety of different coverages
3 instead of just having a traditional self-insurance program
4 or a traditional regular subscriber program. We would
5 offer alternatives.

6 One alternative wouldn't be offered, it
7 might be mandated, and it would be an assigned risk pool so
8 that if you're an employer that has a good experience with
9 safety and accident prevention and another company that's
10 similar to yours has a very bad experience, they would be
11 in an assigned risk program and it would not adversely
12 affect your particular experience. And this goes with the
13 goal of making those who cause the costs pay and rewarding
14 those who don't cause the costs.

15 Some of the other types of ideas that are
16 being proposed in this format might be the idea of
17 deductibles. Just like with your car insurance, if you
18 have no deductible, you pay a higher premium than a person
19 pays if they have a \$250 deductible. Similarly speaking,
20 in Workers' Compensation if you qualified for a certain
21 amount of the risk up front with a deductible then your
22 actual out-of-pocket premium will be lower.

23 These types of concepts will make West

1 Virginia's Workers' Compensation system considerably more
2 like other states. What we have tried to do is mix the
3 best of examples in other states with the needs and goals
4 and particular special circumstances that exist within West
5 Virginia.

6 There are several components to this. A
7 more sophisticated and comprehensive field operating
8 program is a key part of this overall effort. A second is
9 safety and loss prevention and accident prevention.

10 Traditionally, the West Virginia Workers'
11 Compensation system's experience rating system has not done
12 a very good job of rewarding safety and penalizing unsafe
13 occurrences.

14 We have a thorough plan that has been
15 developed that will be unveiled probably next month, I
16 guess, or later this month if the regulations are ready,
17 where we will begin for the first time in the State's
18 history to have a safety and loss prevention program under
19 way within the Workers' Compensation system in the state.
20 Again, ratemaking and underwriting are a key component of
21 this program.

22 The fourth critical area is collections.
23 And I know all of you have read about more aggressive

1 approach we've taken over the past couple of years to bring
2 in a better return on our collections and ensure that every
3 dollar that is owed to the system is pursued aggressively.

4 Now, one word of caution. We have some
5 excellent staff within the Workers' Compensation Division
6 of West Virginia but we also are talking about, as you'll
7 see in the next few minutes, a very, very complex
8 undertaking. And we recognize that it will take
9 considerably more staff, it will take resources and skill
10 levels that don't currently exist within the Workers'
11 Compensation Division.

12 It will be a very serious challenge to
13 staff those needs and actually deliver to you, the
14 customers, the kind of product and service that we are
15 committing with this type of a regulation. And I offer
16 that merely as a cautionary and a realistic note because we
17 certainly recognize in state government that we don't
18 always deliver on a promise that is laid out for the state
19 -- and I think it's important that everybody recognize that
20 we are talking about a program that we can not just pick up
21 and put into our Workers' Compensation Division right now.

22 Like everyone sitting at this table knows
23 that this is a herculean undertaking that is going to

1 require substantially different skills than currently exist
2 within the organization.

3 With that, I would like to first offer my
4 colleagues on the Performance Council the opportunity to
5 make any remarks, and I'd like to remind each of you that
6 we don't have individual mikes. You're welcome to either
7 come over here to the podium or speak loudly and don't let
8 your voice trail off, I believe is what the court reporter
9 asked me to say. Fred, any comments?

10 MR. TUCKER: No.

11 COMMISSIONER RICHARDSON: Gene?

12 MR. BAILEY: No.

13 COMMISSIONER RICHARDSON: Everett?

14 MR. SULLIVAN: No.

15 COMMISSIONER RICHARDSON: Thad?

16 MR. EPPS: No.

17 COMMISSIONER RICHARDSON: Chris?

18 MR. JARRETT: No.

19 COMMISSIONER RICHARDSON: All right, with that,
20 I'd like to introduce again Ed Staats, the Chief Financial
21 Officer of the Workers' Compensation Division who will
22 provide an overview.

23 Randy, if you'll kind of keep an eye or

1 someone to make sure that we get the list of people that
2 want to testify -- everyone is welcome, everyone is
3 encouraged to comment today.

4 We really have two goals here, one is for
5 you to learn and the other is for us to learn. So thank
6 you very much for being here.

7 MR. STAATS: Thank you, Commissioner. Can
8 everybody hear me all right? We want to welcome you-all to
9 this public hearing on what in actuality is a plan to
10 finance workers' compensation in the future in the state of
11 West Virginia.

12 This financing plan known as Series 9, Risk
13 Management, simply represents another milestone along the
14 road that we have chosen to correct this system.

15 The direction we have established has
16 generated significant interest which is illustrated by the
17 participation of you all today. There is substantial
18 agreement on the direction that we have selected.

19 Let me read to you the comments that we
20 have received from employers throughout the state in
21 reaction to the information that we furnished, along with
22 copies of the rule.

23 From a company in Weirton. The comptroller

1 there, Charles Robinson, said people in his office cheered
2 when we passed around the brochure. They were very
3 complimentary about the proposed changes and have already
4 seen positive changes in claims management.

5 They were very excited about retros because
6 their company has instituted risk management programs, but
7 the loss reduction has not hit its experience modification
8 factor. Suggested that we not require a deposit for
9 companies with good Fund history and good credit ratings.

10 From the Bavarian Inn in Shepherdstown, the
11 manager there, they want the retro. Want to know how they
12 sign up. They're very excited that someone's looking out
13 for people who don't have claims. They're going to be at
14 the Martinsburg hearing even though that's their day off.

15 A small cabinet producer, said their
16 premiums went up. They work hard to control their losses.
17 They would like to see multiple classes, and they were
18 concerned that someone would keep this rule from going
19 through. Felt that this one was for the little companies.

20 Exhibits 2 and 3 of your presentation
21 reflect the objectives that we are trying to achieve. But
22 the objective that most reflect that underlying strategy of
23 this financing plan is the one on Exhibit 3 which begins

1 "Create a framework."

2 This strategy is a back-to-basics
3 fundamental recognition that the financial ills of Workers'
4 Compensation can be corrected by employers and their
5 employees if the system provides methods for those groups
6 to directly influence Workers' Compensation rates.

7 This financing plan fixes the
8 responsibility for rates with the employers and provides
9 rewards if prevention of work place injuries or illnesses
10 occurs and is reflected in reduction and injuries.

11 Such a strategy to be successful requires
12 full and complete disclosure to you of all policies,
13 methods, procedures and cost drivers impacting your rates.
14 No more hocus-pocus. It is our intention to provide you
15 with this disclosure as we move forward. We encourage you
16 to review the rule and comment accordingly.

17 A detailed presentation of this rule due to
18 its sheer complexity and massive size is simply not
19 feasible at this time. My risk management team intends
20 though to hit the high spots of the concepts that are
21 included in this rule.

22 Let me introduce you to the members of that
23 Risk Management Team. First of all, Cheryl Ranson.

1 Cheryl's a certified public accountant. She has a degree
2 in mathematics, physics and science from WVU and a degree
3 in accounting from the University of Charleston. She has
4 six years of private sector accounting management
5 experience, along with eight years as an instructor in
6 mathematics and physics.

7 Amy Graves is a graduate of Purdue
8 University with an M.S. in management and a graduate of the
9 University of Michigan with a B.A. in economics. She has
10 five years' experience in the life, health & property
11 casualty industry with CNA and MetLife, as well as three
12 years' experience as an account analyst for Travelers
13 Insurance Company in underwriting, pricing and marketing
14 Workers' Compensation coverages.

15 Randy Suter from our Legal Services
16 Division is a 1978 graduate of the West Virginia University
17 College of Law. Has experience in private practice as well
18 as 16 years' experience in various state agencies.

19 And finally, Chris DeAngelis. Chris has
20 seven years' experience in property and casualty insurance,
21 including policy, reserving and pricing of Workers'
22 Compensation coverage. He has worked with such companies
23 as Allstate, Kemper and St. Paul and is pursuing his

1 actuarial designation. Chris is going to discuss the
2 ratemaking section of the rule.

3 MR. DEANGELIS: Thank you, Ed. I'm going to try
4 to avoid the microphone so that I can sit here and flip
5 some slides. Can everybody hear me back there?

6 As Ed said, I'm here to talk about
7 ratemaking. And what we mean by ratemaking is actually the
8 methods, the formulas, the parameters, all the assumptions
9 used to calculate the classification rates as well as each
10 individual employer's rates.

11 For some of you, I'm sure you feel like the
12 guy here in the picture where you're just kind of left
13 hanging, not knowing, you know, how you got there and how
14 the rates were arrived.

15 Well, really the new rule gives us the
16 latitude to design a system that can change some of these
17 issues that have been apparent in the system. And today
18 I'm going to talk about some of those changes.

19 I'm going to keep it at a high level, as Ed
20 said, because really to go through a lot of the technical
21 information in here would take much too long. But we are
22 planning on having educational sessions in the next six
23 months as we go forward with implementation. And as those

1 are decided on, when and where, we'll certainly let you
2 know so that you can be a part of those.

3 I do want to talk about four main
4 objectives that went into the design of the new ratemaking
5 system. Those are, one, we wanted to have a classification
6 system where the industries that are producing the costs
7 are going to have to pay for those costs.

8 Secondly, for the individual employers, we
9 wanted those employers who have -- who did a good job of
10 keeping their losses down, their rates would be lower. And
11 vice-versa, to kind of empower them to change their rates.

12 Thirdly, for all parties involved, we
13 wanted a system that can better communicate what are the
14 cost drivers and what are the things that are really
15 changing, migrate individually so that I know how to try to
16 take a stand and lower my own rates.

17 Finally, we needed to create a model that
18 had the flexibility to adapt the changes in West Virginia
19 Workers' Comp environment as well as support the
20 alternative rating plan which will be discussed later.

21 The first objective was to create a system
22 where classification rates are more based on which
23 industries are creating those costs.

1 As I said, the rule has given us the
2 ability to design a new system. And we've been working
3 very hard over the last six months, and I think we've come
4 up with some really good things. But what has been also
5 happening over the last several years at the Division,
6 which is really the key foundation to the changes that
7 we're making, is that they've implemented two new
8 administrative systems that actually capture the data and
9 give us the capability to do the things that I'm going to
10 talk about. Without those systems we would not be able to
11 do and make the changes that we're able to do to make this
12 system better allocate the costs.

13 In the system, because of the more capacity
14 and the ability to collect more data, we have better
15 formulas that are more comprehensive. They can actually
16 capture deeper costs and help us analyze each different
17 industry so that we know how to better allocate those
18 classification or base rates to each industry.

19 At the same time, having more data gives us
20 the ability to use more methods so that when we actually
21 are coming up with rates we can look at different angles
22 and make sure that our projections seem to be in line.

23 In the past we had limited data and so we

1 really didn't have as much -- we did not have as many
2 formulas to look at from different angles. Now we can, and
3 I think those will allow us to have some checks and
4 balances to really validate the rates we put up for each
5 classification.

6 Finally, there is a couple other issues
7 that are going on. One is field audits which Cheryl will
8 talk to about, and that's going to help us clean up some of
9 the classifications so that we can have people who are
10 misclassified put in the right class. And as a result, we
11 kind of clean up the data that is used to generate these
12 rates and it will be more reflective of what's actually
13 happening in each industry.

14 The second objective, after we've done the
15 classification rates, we wanted to come up with a system
16 that allows for individual employers in each classification
17 the ability to have rates that are more responsive to their
18 actual losses.

19 Again, because of our new data capacity, we
20 have more comprehensive formulas that really allow us to
21 adjust for base rates in those classes, if they are too
22 high or if they are too low.

23 For example, if say I'm a widget maker and

1 in my class the base rate is \$10. Well, if I have good
2 experience, that base rate is going to come down to \$8.50,
3 let's say. So my rate goes from 10,000 to \$8,500.

4 We want a system that really encourages the
5 employer to go back and really empower themselves to try
6 and take loss control seriously so that by reducing their
7 claims, they're going to reduce their own costs. And
8 essentially they're going to reduce the cost to the
9 Division, so it's only fair.

10 Other things that give us the flexibility
11 is that there's different things happening within each
12 different industry and this formula really gives us the
13 chance to adapt to that.

14 For example, certain industries may have
15 very high experience claims, but not a lot of them. And
16 then others might have very low experience claims, very low
17 costs but they have, you know, several of them. And as a
18 result this model can adapt to different types of
19 industries. You can have different formulas for different
20 industries, and then it becomes more reflective and more
21 tailored to that individual's actual claims experience.

22 The third objective is to really have a
23 system that better communicates to you, the employer, where

1 are the costs coming from, how did my rate get to this
2 point and what can I do about it.

3 And I think that what we're trying to do is
4 really show you the pie as to where the costs are coming
5 from. There is a certain part, claims costs which you have
6 some control over, and by reducing those you're going to be
7 able to reduce your rates.

8 There's other things that are going to be
9 in there that you really have less control over and those
10 are just simply administrative kinds of expenses that are
11 necessary to actually implement the program throughout the
12 Division, to settle claims, et cetera, et cetera. But we
13 want to be able to break out on your bill to say, you know,
14 this is the cost for your claims, this is the cost you have
15 to pay to help with the deficit reduction, this is for
16 expenses.

17 And then there's going to be other
18 components that will be talked about later on at this time
19 from the Quality Loss Management Program, and that's
20 another rule that's being discussed. Loss Prevention
21 Surcharge and the Adverse Risk Assessment that was
22 mentioned earlier.

23 Finally, our fourth objective was to really

1 allow for a system that has the flexibility to adapt and
2 support new products. I know in the past you probably
3 thought that it's been kind of hocus-pocus matching and
4 you're not really sure where it comes from.

5 But the new system and the new methods
6 allow for the first time that the folks sitting right here
7 on the Performance Council will have input into some of the
8 assumptions and some of the methods used in the formula.
9 And these folks, as Commissioner Richardson said earlier
10 when he described their backgrounds, are really
11 representative of the industry, of the employers, of the
12 employees. And these are the folks that are going to have
13 the ability to make these decisions. And so we feel that
14 we're putting in the flexibility to put together a system
15 that's more reflective and more tailored to your needs.

16 At the same time this new system is the
17 foundation in supporting these new products, such as the
18 group retro, the individual retro and the deductible.
19 Because maybe you are somebody that needs a different type
20 of product that's better suited to your needs. And
21 hopefully we can put that together and then you can get the
22 product you need and you will feel better about the system.
23 Here to talk more about these different products is Amy

1 Graves.

2 MS. GRAVES: The same with Chris, I think I'm
3 going to give it a try without the microphone and hopefully
4 all of you can hear me.

5 As he mentioned, I'm here to talk to you
6 today about some of the alternative rating plans that have
7 been discussed and distributed to you in the pamphlets as
8 well as referenced in Sections 9 through 13 of the current
9 Risk Management rule.

10 I wanted to answer three major questions
11 about these alternative rating plans which probably are in
12 the minds of most of you. One of which are what are these
13 plans and which one is the best for me?

14 The second question is, how do I qualify
15 for these plans or will I be mandated to be covered under
16 one of the plans?

17 And then finally once I've been covered
18 under a particular plan, how do I continue to be eligible
19 for this plan or how will my performance be reviewed and
20 monitored by the Division?

21 The major plans that I'm going to talk to
22 you about are the deductible plans, individual retros,
23 group retros and adverse risk, and the sections and page

1 numbers are referenced in your handout.

2 We already heard a little bit this morning
3 about the deductible plan from the Commissioner. I'm not
4 going to spend a lot of time on that simply because I think
5 he put it very well.

6 It's very similar to your personal
7 automobile policy. You may have a \$200 dollar deductible
8 and so you're responsible for paying claims up to a
9 particular dollar amount. The only difference here is
10 obviously we're talking about Workers' Compensation.

11 And aside from the deductible offered,
12 which will generally be a little bit larger, perhaps 1,000
13 to several thousand dollars, in an exchange for you
14 assuming the risk of paying that deductible amount you'd
15 receive certain reductions in your premiums.

16 The individual retro is a little bit
17 different. It is eligible to people based on their premium
18 size as well as their loss experience. Basically it allows
19 for premium adjustments based on the level of experience
20 that employer's had throughout the coverage period.

21 So if, for example, you were interested in
22 applying for retrospective coverage, at the very beginning
23 you pay your standard premium just like you always would

1 but at the end of your coverage period, if you have losses
2 that were less than expected for your particular
3 classification or your particular industry you would then
4 receive maybe a little bit of that premium back because you
5 had such a great experience.

6 Conversely, however, if you had greater
7 than expected losses occur throughout the coverage period
8 you could then be assessed an additional premium at the end
9 of that coverage period.

10 This plan is intended for employers that
11 believe they're going to have significant improvements in
12 their loss experience within a relatively short period of
13 time, say within an annual coverage period. So employers
14 in that group might want to apply for coverage in this
15 area.

16 On the other hand, this coverage could also
17 be assigned to employers to encourage them to take more
18 responsibility from management if they had consistently had
19 far greater than expected losses throughout the coverage
20 period. So these employers then might be surcharged an
21 additional fee at the end of the coverage period and thus
22 this would provide some modification for them to control
23 their costs.

1 The other plan I want to talk to you about
2 is the group retrospective plan. Basically the structure
3 of this plan is no different than the individual
4 retrospective. Premium payments and premium assessments at
5 the end of the coverage period are basically the same. The
6 only difference here is that obviously it's offered to a
7 group of employers. Well, this group just can't be any
8 group. It has to be a group of employers that are
9 classified under the same classification.

10 And also employers that are members of the
11 sponsoring organization, that has been put together for the
12 most part to manage loss and control costs. One of the
13 primary benefits of the group retros is that it allows
14 smaller employers to be grouped together for the purposes
15 of rating. Therefore, they have the ability to have more
16 impact on their individual premiums and the way their rates
17 are determined.

18 Finally, the adverse risk plan we've heard
19 talked about a lot and I'm sure you're very interested to
20 hear what this is all about. This plan is something that
21 the Division has proposed to really encourage employers
22 with substandard levels of performance to really take more
23 ownership of their costs -- basically what happens is

1 employers that have either not been in compliance with the
2 rules and regulations that you see in this rule, or for
3 example they have had just had a phenomenally bad loss
4 experience. Employers in this category would be mandated
5 for this program.

6 Any employer that is mandated, these
7 mandates would be strictly reviewed and approved. It's not
8 something that the Division can take lightly. There are
9 guidelines for what some of the reasons would be mandated
10 in this plan, are in the rule in front of you. But this
11 would be something that would be approved by the
12 Performance Council.

13 One of the benefits of surcharging the
14 employer is based on their reasons for non-compliance. It
15 may not be readily apparent what the benefit of that is,
16 but one of the benefits is if you look at the premium
17 dollars that the Division must collect in terms of a big
18 pot of money, if employers at associated levels of
19 performance are being assessed greater premium levels, this
20 then means that the employers remaining who have followed
21 the guidelines, who have done very well for themselves in
22 managing their costs will then pay less to make up for that
23 one pot of money.

1 So there is a benefit to those employers
2 that have all along been following the guidelines and the
3 rules and have been taking control over their own losses
4 and costs.

5 So we've answered the first question which
6 basically is, what are these rate plans and how do I know
7 which one to choose?

8 The second question is, how do I qualify
9 for one of these plans and am I eligible or will I be
10 mandated? Basically, the qualification process starts with
11 an application that would be available for you to go out
12 and indicate which plan you think you want to apply for.
13 Perhaps it's deductible, perhaps it's retro.

14 That application will then be submitted to
15 the Division and reviewed by a representative at the
16 Division which we will call an underwriter. At that time
17 there may be additional information such as financial
18 information, description of your business operation that
19 might be needed to determine if you will be eligible for
20 such a plan.

21 Then coverage would be approved under one
22 of the plans that either you have selected or that will be
23 mandated. And coverage documentation of that coverage will

1 be discussed with you and submitted to you in some form of
2 written documentation, be it a certificate of coverage or
3 some sort of policy statement stating coverage terms.

4 The mandate process works exactly the same.
5 The only difference being that there must be a higher level
6 of agreement and approval by members of the Performance
7 Council and the Division representatives.

8 The final question, once you're covered
9 under a certain plan, how will I know if I will continue to
10 be eligible after my coverage period if my initial coverage
11 period has expired.

12 There basically will be two types of
13 reviews conducted. One will be a scheduled review which
14 would be generated or initiated by the Division, basically
15 pretty much is handled by concert with the receipt of field
16 audit materials which Cheryl will talk to you a little bit
17 later.

18 At this review what will be looked at is
19 the employees, if you have special coverage determinations
20 that need to be made of specific employees, classification
21 descriptions, your loss experience, have bills been paid on
22 time, what's your financial standing. Things like that
23 will be reviewed on a regularly scheduled basis.

1 Other reviews that will happen throughout
2 the coverage period will be generated either by internal
3 division generated request for review or request generated
4 from you, the employers.

5 From the employers there may be a request
6 that a name be changed, you've moved. Maybe you're going
7 to a different area of business, and that would constitute
8 a time that a review should be necessary.

9 Other opportunities, for example, within a
10 division for a review might be a claim comes in that shows
11 a claimant resulting in an injury from some sort of
12 activity that really doesn't appear to be relevant to the
13 classification business that you're currently under.

14 So those are some examples of the review
15 process. The responsibilities of these reviews are
16 obviously shared by both the employer and the Division.

17 So those are the three major points that I
18 wanted to share with you today. How do I qualify, what are
19 the plans and how will my coverage be reviewed.

20 Now Cheryl's going to talk to you a little
21 bit about the field audit process and credit management
22 guidelines which are kind of the supporting infrastructure
23 for these plans.

1 MS. RANSON: The first question I have for you
2 today is, when we talk about conducting a pilot program of
3 audits we found out that approximately one-third of our
4 employers in the state were not classified correctly.

5 We might have lawyers who are classified as
6 truckers. I know that's important to some of you that I
7 see sitting in the audience today. Neon glass
8 manufacturers as advertisers, high risk occupations as
9 clericals, salesmen classified as manufacturers.

10 I can tell you right now Randy Suter's
11 working with a gentleman who started out as a manufacturer
12 and then about ten years ago he switched to sales, but the
13 class didn't change. Is this a problem?

14 I think you can see from when Chris was
15 talking to you that it is a problem because not only is it
16 a class that these individuals are in wrong but the class
17 that they should be in is wrong. And how are we going to
18 allocate those premiums, that pot of money to those classes
19 fairly and equitably.

20 Now we, at the Division, can take ownership
21 for part of this problem and some of the employers can take
22 ownership for part of this problem. But what we're going
23 to talk about today is not whose fault it is but what we're

1 going to do about it.

2 Well, what we are going to do about it is
3 we're going to go out and do some field audits. Why do we
4 do field audits? Well, I think you saw from Chrises'
5 presentation how important it is to ratemaking. We've got
6 to identify the employer's true risk if we're going to make
7 these rates fair across the various classes.

8 We also want to ensure that employers are
9 reporting payroll correctly. Do you want to be the only
10 employer in your class who's reporting payroll correctly
11 and everyone else is under reporting? Probably not. So we
12 want to make sure all employers are reporting payroll
13 correctly.

14 And also the third piece which is something
15 that we're emphasizing much more, you're going to hear a
16 lot about, and the Commissioner discussed this, is we want
17 to identify possible safety and loss control candidates.
18 We know we have some people out there who are doing good
19 jobs and we know we have some people out there who are
20 accidents waiting to happen, and they've just been very
21 lucky. So that's going to be a new piece that's going to
22 be added to our audit.

23 Who's going to be audited? Well, we found

1 out that approximately 4,500 of our employers represent
2 about 85 percent of the premiums of Workers' Compensation.
3 So just think what that would be like if we could get all
4 of those employers in the right class, what that would do
5 to your base rates.

6 We're also going to take a closer look at
7 classes who have a history of under reporting, default or
8 misclassification, and also some requests.

9 One of the things I want to point out here
10 is a request from employers. I was talking to an employer
11 the other day and he basically thought it was our place to
12 track down the people who weren't reporting Workers'
13 Compensation. And I asked him how we were supposed to do
14 that. And then I think once he realized that we still had
15 to pay claims for those people's employees then he thought
16 well maybe he might give our fraud unit a call anonymously,
17 of course. So I want to emphasize that we will also have
18 employers that might request audits.

19 The next line we will be talking about is
20 more about field audits. For example, what is a field
21 audit? Well, we'll go through that quickly. Obviously
22 we're going to audit premiums, do a classification study
23 and a preliminary safety review.

1 If you're like me you're probably sitting
2 out there saying, how in the world is the Division going to
3 do all these things and do 4,500 audits with the staff that
4 they have. We're not.

5 We're going to subcontract this out through
6 the RFQ process to CPA firms and PA firms throughout the
7 state. We will have a small internal staff though who will
8 manage the audits, assign them, review them, update them,
9 but also handles some quality control issues and act as a
10 liaison between the auditors and the employers.

11 When is this starting? In January, 1997.
12 We figure the first list will take about 18 months and then
13 after that there will be regularly rescheduled audits.

14 We have some employers out there who think
15 they will be never audited by Workers' Comp and have paid
16 their premiums accordingly, and we are going to go out and
17 audit some of these employers.

18 And when you start talking about auditing
19 people on a random basis some of these employers are going
20 to pop up. And where's this going to be done? It's got to
21 be done on site. There's no way that we can do
22 classification determinations if we're not at the
23 employer's work site.

1 The next piece that I'll be talking about
2 today has to do with our credit management, tax liability,
3 whatever you want to call it. I'll go through this
4 briefly.

5 But first I want to talk a little bit about
6 things that it might be nice if it happened at Workers'
7 Comp. For example, what if our premiums could be shifted
8 from those who are willing to pay to those who should pay.
9 Do you want to be the only one paying? Do you want to be
10 left holding the bag?

11 What if for Workers' Compensation we could
12 be proactive in dealing with employers rather than
13 reactive. If we have an employer that we know is a bad
14 credit risk or we know has a history of not paying or being
15 in default, you know, do we have to wait a long time to
16 deal with these employers or can we be proactive in dealing
17 with these employers.

18 If the Workers' Compensation Division could
19 do more investments or if we could receive some of our
20 premiums earlier, what do you think that might do to our
21 investments? What do you think that might do to your base
22 rates?

23 I guess what we're trying to say is, this

1 is what we're hoping for from this rule, these tax
2 liability guidelines. And there's basically two points
3 that are emphasized in these guidelines.

4 The first is we're going to assign
5 employers or a group of employers with tax liability rates
6 A, B or C. This is the first time this has been done.
7 We're not going to treat employees equally. Private
8 industry doesn't do it. If we have employers who are a bad
9 credit risk, then they'll be treated accordingly.

10 The Division is also going to determine the
11 frequency of premium deposits. For those of you out there
12 as we go through this, if you don't know what we mean, ask
13 your accountants. This has to do with making Workers' Comp
14 premium deposits in the similar matters as the 941
15 deposits. And that's probably -- if you read that or your
16 accountants read that, they will see that it pretty much
17 came out of the circular for payroll deposits.

18 A couple things I just want to point out
19 here, when we look at tax liability rates we're not just
20 going to look at the obvious. We're going to look at some
21 of the intangibles, what type of a business, what's
22 happening to the industry. If you make widgets and the
23 government decides that you're not making widgets anymore,

1 what's going to happen to that business.

2 Prompt payment history with the Division.
3 Did you have a company that's in default, you shut it down,
4 you started up another company and so forth. So these are
5 some other factors that are going to be considered.

6 For you small employers this is tax
7 liability not to exceed, so you can still be an A rating,
8 which is the best rating, and maybe have a tax liability
9 limit of \$5,000. So I don't want the small employers out
10 there to think that they can't have a good credit rating
11 because of their size.

12 The next line I'll go through very, very
13 quickly. I just wanted to point out here -- this is --
14 well all of this new but this is something that if you have
15 an employer that has less than \$500 premium we're going to
16 let you pay that once a year. And then at the end of the
17 year you can settle up with the Division. The reason I
18 have asterisks here is that's at the Division's discretion.

19 The other point to this line is, you can
20 see we have the C depositors and the A & B depositors. We
21 want our money faster from the C depositors. Okay. And
22 that doesn't mean necessarily that you're a bad person but
23 you might not have the cash flow to make a quarterly

1 payment and that gets you in trouble with the Division, but
2 you might have the cash flow to make a weekly payment or a
3 bi-weekly payment. So I think you can look down and see
4 the difference between the A and B and the C and see where
5 our premium's flowing in.

6 The next two slides, 21 and 22, I'm not
7 going to go over those. I just put those in there merely
8 because they're very similar to what's in the 941 circular
9 and your accountants can look at those. It talks about
10 tracing that and finding out when in theory you would be a
11 depositor.

12 You're probably sitting out there saying,
13 well what if I don't deposit enough money, because that's
14 probably what I would say too. Well, if you don't deposit
15 enough money to cover your premium taxes, as long as you
16 deposit that money -- that's okay. We call this a "safe
17 harbor" and your shortfall would have to be deposited by a
18 make-up date. And if you don't deposit by that date or if
19 your shortfall is greater than the 2 percent then you are
20 going to be subject to the interest and penalties.

21 And then the last section I have here is
22 sort of odds and ends of this Section 14. These are some
23 questions that came to me as I read it and I thought might

1 come to you or your accountants.

2 What if the bank's closed? Well, if the
3 bank's closed then obviously we're not going to have your
4 deposits to you that day and it would be due the next
5 banking day.

6 This one, I think, is pretty important.
7 You probably read a lot about this in the newspaper, on
8 television. You've seen it on television. The IRS is
9 moving to an electronics phone transfer for taxes. Are we
10 going to lean in that direction? Yes. But we have to
11 crawl before we walk. So we have to get this deposit
12 worked out, to get all the bugs out of it before we go to
13 this, but we are eventually going to go to electronic
14 transfer.

15 Now Ed Staats is going to finish up and
16 talk a little bit about some, I guess, anticipations.

17 MR. STAATS: You've probably already discovered
18 that Exhibit 11 in your handout is out of sequence. Under
19 a new methodology at the Fund our performance standard
20 would be in excess of 95 percent. We have met 24 out of 25
21 requirements in the presentation. And under the program
22 which we have worked, we will find a way to make that 100
23 percent.

1 Does anybody remember several years ago --
2 I'm probably showing my age -- the ketchup commercial that
3 shows Hunts ketchup moving out of an upturned bottle just
4 real slow and in the background was Carlie Simon's song
5 "Anticipation." Anybody remember that? Well, if you do,
6 that's the expectations you can have of the implementation
7 of this rule.

8 Even though we have over the past several
9 years crafted changes in claims management, financial
10 reporting, receivables management, upgrading of people
11 skills, upgrading of technology, redesign processes,
12 expansion of statutory authority and the development of a
13 constant vision for the West Virginia Workers' Compensation
14 system. Those foundation pieces so necessary to the
15 implementation of a very sophisticated financing plan has
16 still not corrected all of the obstacles we face in order
17 to bring better value to the stakeholders in this system.

18 Those obstacles still include a critical
19 need to clean up information, such as the classification
20 office, a critical need for support of a very sophisticated
21 technology system, a critical need for changing our
22 existing complement of human skills to include insurance
23 and risk management skills that are possessed by people

1 committed to do whatever it takes to improve this system.

2 A critical need to communicate with and
3 educate our stakeholders of our system to an understanding
4 of the impact of their actions. A critical need for
5 commitment by our stakeholders to support our improvement
6 efforts, a critical need to avoid a cultural problem at
7 Workers' Compensation that I refer to as organizational
8 procrastination.

9 And finally, a critical need for our
10 stakeholders to understand that in the long term this
11 financing plan demands great change in how we all do
12 business. It cannot be done overnight. The obstacles to
13 our success are great but they can be overcome, they can be
14 achieved.

15 The Fund is so much more capable of being
16 able to implement this sophisticated financial system than
17 it ever has before. But every success, every solution also
18 brings about some unique set of problems. Implementation
19 of this rule is going to create some additional mischief,
20 some additional problems, some additional challenges for
21 both you and the Fund.

22 Employers, for instance, will be inundated
23 with proposals from organizations developing loss control

1 programs, offering associations with plans to include the
2 administration of the various types of financing programs.
3 Employers will have to judge these proposals on what's in
4 it for me, who will do the best job for me or my group,
5 what are the services you are going to receive, what
6 reports do you have to file, what kind of criteria do you
7 have to maintain, what is your risk of being part of a
8 group, what are the costs of being part of a group, how
9 does that impact your total investment in loss control.

10 Implementation of this rule requires the
11 exercising of informed, skilled judgment by Fund personnel.
12 Failure to do so will create inequity beyond those we are
13 trying to cure and bring additional mischief.

14 This rule requires adherence to new
15 policies and procedures by employers and their
16 representatives as established under the authority of the
17 Performance Council with adequate safeguards for review and
18 reversal of improper judgments or abuses. Failure to
19 develop these safeguards will result in additional
20 mischief.

21 Successful implementation can generate
22 significant benefits to the employers and the employees in
23 West Virginia, the most significant of which is the

1 opportunity to share what's happening in other parts of the
2 country.

3 All across this country there are stories
4 and examples of successes where employers and their
5 employees working together have prevented injuries, have
6 reduced their Workers' Compensation costs and have shared
7 the benefits.

8 This rule encourages the development of
9 such success in this state. The benefits to this state, to
10 all of us, are a more financially viable Workers'
11 Compensation system thereby improving the State's overall
12 financial health. It is the opportunity for everybody to
13 win except for those who do not attempt to control and
14 prevent injuries.

15 As under this rule they will be more
16 responsible for paying the costs of ensuring their risk.
17 And this approach and this financing plan is not intended
18 to allow the shifting of that risk to other employers
19 within the state.

20 There are many people committed to
21 improving this Workers' Compensation system. We think
22 we're on the right track. We believe we're on the right
23 track. We're asking for your input to tell us if we're on

1 the right track and help us correct that direction if we're
2 wrong.

3 The next section of our presentation is
4 kind of a question and answer regarding our presentation.
5 Andy, I'm going to ask Randy to moderate that.

6 COMMISSIONER RICHARDSON: Well, I just want to
7 say Ed, Chris, Amy and Cheryl, I thought these
8 presentations were exceptionally, and we very much
9 appreciate it. First class. Randy.

10 MR. SUTER: Well, I guess you get to take a
11 couple shots at me or whomever. As we've indicated in the
12 earlier presentation we have about ten minutes here for
13 just quick question and answer. We can tap into the
14 resources of the people who made the presentations.

15 I would put out as a cautionary note that
16 prior to your public comments, if someone wants to get up
17 and make a public comment with regard to the rule, you're
18 still going to have the opportunity to do that, but this is
19 an opportunity for you to ask us some questions.

20 Please identify yourself and talk loudly.
21 The court reporter would like to get your information. Do
22 we have any questions somewhere along the line?

23 MR. CLARK: I'm Andy Clark. I have a

1 question. You're primarily interested in collecting from
2 the employers. You're not interested or you have nothing
3 to do with those people who are collecting benefits from us
4 as far as investigative purposes? You're not responsible
5 for that, is that right?

6 MR. SUTER: Well, yes. We're all responsible for
7 that and we're all responsible for the employer end of it.
8 If you will, there's two ends to Workers' Compensation.
9 There's probably a lot more than that.

10 There are the people who deal with the
11 claims processes and there are the people that deal with
12 the employer accounts. And those two inevitably will mix
13 together over the course of time.

14 There have been changes with regard to how
15 claims are administered at the Workers' Compensation
16 Division. That's not what this rule is about, but there
17 have been changes that have taken place over the course of
18 the last couple of years. There are more changes to be
19 made. It is my understanding -- a lot of folks have talked
20 about the provisions of Senate Bill 250 and some people
21 have complained about them and some people have praised
22 them, that's with regard to how claims are affected.

23 This is a little bit more about how

1 employers have a stake in helping to manage their claims
2 because the claims will ultimately drive the costs of their
3 premiums.

4 MR. CLARK: Does that mean they'll have future
5 meetings concerning how you plan to handle claims by our
6 employees or by doctors that represent those employees that
7 perpetuate the thing?

8 MR. SUTER: It's my understanding, and you can
9 talk to the Performance Council about this, that other
10 rules are not in place but are to be proposed with regard
11 to the handling of claims and claims administration.

12 COMMISSIONER RICHARDSON: I'll tell you what, Mr.
13 Clark, it sounds to me like you've got a specific issue
14 you'd like to talk about; is that right?

15 MR. CLARK: I can give you a couple of issues.

16 COMMISSIONER RICHARDSON: Okay, why don't you and
17 I get together after the meeting then or one of the other
18 representatives at Workers' Comp will get the information
19 so that we can have the investigators look into it.

20 MR. CLARK: Thanks very much. I appreciate it.

21 MR. SUTER: That's a good point. We do have an
22 investigative unit. We've had a very active unit in the
23 last couple months. We've got a prosecutor that's working

1 with Kanawha County Prosecutor's Office, Kanawha County
2 Prosecutor's Office to look at some of these matters, but
3 in the same vein that they're looking at claimants, they're
4 also looking at employers because we've experienced quite a
5 bit of -- or some fraud with regard to employers as well as
6 claimants. Any other questions? Yes, sir. Would you
7 identify yourself, please.

8 MR. SMITH: Yes. My name is Patrick Smith.
9 What's actually going to be the coverage period? Is it
10 going to change based upon --

11 MR. SUTER: The coverage period?

12 MR. SMITH: Yes. Currently we go back, what,
13 five years on our premiums coverage. So in order to
14 establish new rates, how often will that occur? Quarterly,
15 semi-annual, five years?

16 MR. SUTER: Let me repeat that so I make sure I
17 understand what we're talking. How far are we going to go
18 back and look at your claims experience with regard to
19 determining what your rates are?

20 MR. SMITH: Yes. You said that you were actually
21 going to assess and look at your experience factor. Well,
22 what's going to be the defining period? Is that going to
23 be the same for everybody?

1 MR. SUTER: Well, I'd like to defer that to Chris
2 DeAngelis. He might be able to explain that a little
3 quicker and a little better than I can.

4 MR. DEANGELIS: In terms of the experience used
5 to calculate the rates, that's one of the flexible portions
6 of the ratemaking formulas. If you have industry that has
7 very high severe claims, maybe a lot of permanent total,
8 you may want to go back five, ten years. It depends on the
9 industry. Where in another situation you may have an
10 industry where claims drop off rather quickly, and then you
11 can go back three or five years. It depends. But that is
12 one of the things in the model, the flexibility. That's
13 one of the determinations that will be made by the Performance
14 Council.

15 So to answer your question, it changes for
16 each individual situation or at least each industry, per
17 se. Does that answer your question?

18 MR. SMITH: It doesn't satisfy me but it answers
19 my question.

20 MR. SUTER: Any other questions? Yes, sir.

21 MR. STAATS: Excuse me. There's another aspect
22 to his question. I think he also asked about the term
23 coverage period.

1 What was just discussed was the rating
2 period. The term coverage period as we use it in this rule
3 is a prospective period under which whatever plan you
4 select that will be the period of coverage in the future.

5 For example, you may be under a
6 retrospective rating plan for a period of 12 months and
7 then adjustments are made. Or you may be under some other
8 type of plan for a period of 18 months. We have not yet
9 made the decision which time period for coverage will be
10 used.

11 MR. SUTER: Yes, sir, would you identify
12 yourself.

13 MR. FIKE: Elmer Fike, F-i-k-e. I'm interested
14 in the deductible plan that you've talked about. Are you
15 talking about deductible for each claim, each injury? Are
16 you talking about deductible --

17 MR. SUTER: You're talking about -- you mean the
18 aggregate deductible versus an individual claims
19 deductible? How the rule is currently set up is for a
20 claims deductible. However, we are trying so much per
21 claim. However, we're open to other suggestions and we
22 believe the rule is fairly flexible in what it allows us to
23 do.

1 MR. FIKE: Where does that stand in the proposal?
2 Do you have the proposal drawn up on that yet?

3 MR. SUTER: A copy of the rule that we've
4 provided to you --

5 MR. FIKE: You mean today? I guess I didn't get
6 one.

7 MR. SUTER: Oh, I'm sorry, we'll get you one.
8 And you'll be able to read about it. There's an entire
9 section with regard to deductibles, deductible rating
10 plans. Let's see, if I'm not mistaken that would be
11 Section 9.

12 COMMISSIONER RICHARDSON: Mr. Fike, this is the
13 actual proposed regulation and also we need for you to get
14 one of these (indicating). But if you'll look at Page 20
15 of that thick handout, you'll find the information on
16 deductibles.

17 MR. FIKE: If it's here, I don't --

18 MR. SUTER: Look at Section 9, Mr. Fike. Any
19 other questions? Yes, sir.

20 MR. TALBOTT: Bill Talbott. Andy, I don't want
21 to prolong this. Mr. Clark was asking about -- we're very
22 concerned about the investigative process of these claims.
23 We feel that this is the main reason for our increase in

1 premiums. The fact is that a lot of people is getting paid
2 that shouldn't be because there is not enough investigation
3 being done. I know Andy has a particular problem, I know
4 other people, every employer has this problem, and we feel
5 if that's controlled a little more then our rates might go
6 down. I just wanted to make that a matter of record.

7 COMMISSIONER RICHARDSON: If I could respond, and
8 I recognize that that is an issue for a number of employers
9 and is a particular concern for some of the car
10 dealerships, as you and I talked about a few weeks ago, or
11 a month ago now.

12 This program, if you will recall the
13 presentation, is multifaceted. And not only do we propose
14 to change how your rate is decided and what kind of plans
15 are available for you but there's a real healthy element of
16 risk management and loss prevention. And we recognize that
17 we've got to work with employers to clear out these
18 inappropriate claims. I'd like to think it's probably
19 doing better now than it was a few years ago. I also
20 realize it has a long way to go. But, you know, we have
21 some investigators on staff, we have some state policemen
22 on staff that are dedicated solely to Workers' Compensation
23 fraud. We're also seeing a reduction in the time that

1 people are collecting Workers' Compensation as result of
2 the claims management process that we've instituted.

3 So it's a multifaceted problem that
4 ultimately does, as you said, come back and effect your
5 rate. And today's hearing is primarily oriented towards
6 the ratemaking and underwriting because of the proposed
7 regulation that's being considered by the Council, but I am
8 very, very interested in the individual concerns on claims
9 and want to take any information you've got and get the
10 investigators to follow up on.

11 MR. TALBOTT: Will you have such meetings later
12 on in the investigative section?

13 COMMISSIONER RICHARDSON: We have not scheduled
14 anything like that but if that is something that you would
15 like to see scheduled, I'd be happy to consider something
16 like that.

17 MR. TALBOTT: I think it would.

18 COMMISSIONER RICHARDSON: Okay. Thanks for the
19 feedback. Randy, I didn't mean to --

20 MR. SUTER: That's okay. We just had a few
21 minutes to answer some questions. I think we probably
22 need to get on to the public comment portion of the
23 proceedings. If you will recall the podium's up here. The

1 microphone is up here. I want to make sure that you speak
2 loudly enough so the court reporter can hear you. This is
3 a transcribed proceeding. Please be aware of that. Would
4 you like to take a break for a couple minutes?

5 COMMISSIONER RICHARDSON: Let's move on. Is that
6 all right? The reason I say that is, despite a pleasantly
7 large crowd, only two of you are unbashful enough to ask to
8 speak.

9 However, don't let that stop you. If after
10 the two presenters that have indicated that they wanted to
11 say something for the record have made their presentations,
12 I will again make that offer. I will again offer an
13 opportunity for question and comment from the floor and I
14 will give the opportunity to Council to close and then
15 we'll wrap up.

16 We have close to 50 people that have signed
17 up today. If you haven't signed up to signify that you're
18 here please do so before you leave today. We would very
19 much appreciate having that recorded.

20 The first individual who has indicated an
21 interest in speaking is John Hodges representing the
22 National Federation of Independent Businesses.

23 MR. HODGES: Thank you, Commissioner, members of

1 the Performance Council. I'm John Hodges. I represent the
2 National Federation of Independent Business in West
3 Virginia. We have about 32,000 small business members in
4 the state.

5 I think the first thing we want to do is
6 take this opportunity for all our members to thank the
7 Commissioner and this Performance Council for all the long
8 hours you've spent working on this regulation and the work
9 you've done throughout the several years you've been
10 together. I think you've made a tremendous difference for
11 all the small employers in the state.

12 We do like your concepts in this rule or
13 reg or whatever we want to call it, but we had a couple of
14 things that we wanted to make suggestions on.

15 I think maybe we were the first group to
16 meet with the Commissioner years ago and talk about the
17 possibility of a deductible system. And I think we also
18 talked about a group rating plan.

19 I'm going to isolate just the group rating
20 plan for now. I think someone else is going to speak about
21 the deductible plan.

22 The first thing is, as far as the group
23 rating plan, as we read it, and I'm not certain that we're

1 reading it correctly, if we go with just the group with the
2 same classifications, we're reading that they're about 259
3 classifications. And if that's the case then we probably
4 have a serious problem ever getting enough employers in one
5 classification to have a group plan.

6 Now if we're talking about the governing
7 classes, 91, then I think that's more realistic. And even
8 if we could dwindle that a little bit we could have a
9 better possibility of having some group plans put together.
10 And NIFD, I know in Ohio, does have a plan and I'm not
11 certain how many rating plans they have within that. So
12 that is one of our concerns. If you could take a look at
13 that and maybe possibly look at the state of Ohio. I think
14 Washington's working on the same type plan. We'd
15 appreciate your taking a look at that.

16 The next concern that we have is -- and I
17 know this is a retrospective rating plan rather than the
18 plan that they have in Ohio, and we understand the reasons
19 for that with our Workers' Compensation Trust Fund.

20 The other concern that we have is that we
21 have the requirement I think within a regulation that the
22 group have an aggregate premium of \$500,000, and that is
23 another concern we have as far as putting some groups

1 together that we think could benefit both business and the
2 Fund.

3 For example, now in Washington they have no
4 certain number of risks and they have no aggregate premium
5 requirements which is pretty far out. But in Ohio they
6 have 100 risk and/or \$100,000 in premiums. We think that
7 could possibly be a little more reasonable in West
8 Virginia. If you wouldn't mind taking a look at something
9 like that to enable us to maybe put some of these groups
10 together.

11 And I guess last but not least and it's
12 kind of technical, I know, but under -- on Page 29, they
13 talk about the group retrospective rating plan, the
14 schedule of adjustments.

15 In the number of annual interim premium
16 estimates and the timing of the final reconciliation should
17 be clearly stated at the beginning of the retrospective
18 rating policy rather than by an agreement between the group
19 and the Division after the policy period begins. And we
20 wondered if you could also take a look at that situation.

21 That's really all we have to say about the
22 regulations, and we certainly once again want to thank you
23 for all your hard work.

1 COMMISSIONER RICHARDSON: We appreciate your
2 thanks but we would direct it to the staff. I want to give
3 them the credit in this. They've done an exceptional job.
4 Members of the Council, do any of you have any questions
5 for Mr. Hodges?

6 (No response.)

7 COMMISSIONER RICHARDSON: All right. Thank you
8 very much. Our next presentation will be from Mr. Elmer
9 Fike.

10 Again, do we have other individuals that
11 would like to speak, please prepare to do so. This is the
12 last person who signed up.

13 MR. FIKE: I'm Elmer Fike. I'm concerned about
14 the complications of the deductible system. In automobile
15 insurance the deductible system results in a tremendous
16 amount of savings on the policy. It appears to me you
17 could have the same sort of savings in the policy if you
18 could have a reasonable deductible limit. But I don't
19 understand why there is all the requirements, and I haven't
20 had a chance to review this in detail, but there seems to
21 be an awful lot of requirements and financial
22 responsibility, statements and all that. I'm not sure why
23 it should be any more difficult to have more financial

1 responsibility if you have a deductible policy than if you
2 don't have a deductible policy, that is providing the
3 deductible level is relatively low.

4 In our groups we talked about deductible
5 policies, items below maybe 1,000 to \$4,000 per incident.
6 And most of our employers could handle that kind of thing
7 without too much trouble, and it would reduce dramatically
8 the amount of paper work and cost of paper work on the part
9 of the Workers' Comp as well as the part of the employer.
10 It would reduce that paper work dramatically.

11 In my company, I, in effect, operated that
12 kind of a plan for two or three years and which I -- when
13 an employee had an incident, I had a person on staff to
14 follow up with them immediately to make sure they had
15 proper medical supervision, they got taken care of and got
16 them back to work as soon as possible.

17 When I started this plan, I thought my
18 employees might feel that I was trying to follow them up
19 and, you know, keep track of them to make sure they weren't
20 goofing off. It was just the opposite. The employees were
21 delighted that we, as a company, took that kind of interest
22 in their well being and were anxious to get them back on
23 the job as quick as possible.

1 Our experience had been that if they waited
2 until they got recommendations from Workers' Comp on what
3 doctor to see and all that sort of stuff that it drug out
4 and drug out. Sometimes it was weeks or months before we
5 could get them back to work. Whereas with our own plan
6 where we took care of them, we were able to get them back
7 to work very much sooner and we found our employees
8 appreciated that.

9 Now that's the kind of a plan I would like
10 to see. In my case, and I kept track of all the costs that
11 we filed with the Workers' Comp, and they paid for it, but
12 the way I'd like to see it operate is, that we would just
13 take care of it ourselves, all our bookkeeping, all our
14 costs up to a level. And I don't know why that couldn't be
15 -- work out very well. It would save everybody an awful
16 lot of paper work and a lot of effort, and I would like to
17 see you work on this kind of a plan, and I'll be glad to
18 cooperate with anybody to try to develop the kind of a plan
19 that would be best for everybody, the employees, the
20 Workers' Comp and employers. I'd be happy to do that.
21 Thank you.

22 COMMISSIONER RICHARDSON: Thank you, Mr. Fike.
23 Do any members of the council have any questions for Mr.

1 Fike?

2 (No response.)

3 MR. FIKE: I haven't had time to really study
4 this in detail but there does appear there's an awful lot
5 of talk about security and deposits and, you know, things
6 of that nature, and I'm not sure why all that's necessary.
7 You don't have that when you take out deductible auto
8 insurance, and I just don't understand why we need all that
9 type of bonds and security arrangements. Maybe somebody
10 can answer that.

11 COMMISSIONER RICHARDSON: Chris or Mr. Epps,
12 would you want to respond to that? Randy, whoever.

13 MR. SUTER: What I've heard Mr. Fike saying is
14 that there are too many financial requirements in order to
15 obtain a deductible plan. It is anticipated that the
16 financial requirements would slide up or down depending on
17 the amount of the deductible that's offered.

18 In other words, someone with a very high
19 deductible, we would want more security out of them than
20 someone with a very low deductible.

21 Something Mr. Fike also indicated of the
22 wanting to take care of it yourself, and Mr. Fike, I don't
23 doubt that you would. Unfortunately not all employers are

1 going to be of the same ilk as you. And what we have
2 instituted in the deductible plan is reimbursable
3 deductible where the Division pays out, we send a pay order
4 to the business, they send the Fund back the money. This
5 guarantees that employees will have timely payments. You
6 may make those timely payments to the employees but not all
7 employers would do that and we want the measure of security
8 in there for the employees that are covered by Workers'
9 Comp.

10 MR. FIKE: Well, my answer to that is that's why
11 we have labor unions and grievance procedures. If the
12 employers don't take care of their employees that's what
13 the union's for. We'd like to give them some work to do.
14 They do that job very well in my experience. They're right
15 on their toes.

16 When the employer doesn't take good care of
17 their employees, the union's right there to let you know.
18 You can file a grievance, they've got it taken care of. I
19 don't understand why that isn't the answer to the problem.
20 And if they don't have a union, the employees could have a
21 provision that the employee could file a grievance with the
22 Workers' Comp if there's no collectively bargaining group
23 involved. The same thing is true in deductible auto

1 insurance. It's the way it works in deductible auto
2 insurance.

3 COMMISSIONER RICHARDSON: All right, thank you,
4 Mr. Fike. Appreciate your thoughts and comments and let me
5 remind everyone that the period for written comments
6 continues until the 8th of October. That is one month from
7 yesterday.

8 Written comments are to be directed to
9 Randall Suter. You now know the face with the name, at the
10 Legal Service Division, Post Office Box 3922, Charleston,
11 25339-3922. Are there others wishing to speak?

12 (No comment.)

13 COMMISSIONER RICHARDSON: Members of the Council,
14 would anyone care to make comment today? Mr. Epps. Mr.
15 Epps is the Chairman of the Finance Committee that has this
16 rule under consideration.

17 MR. EPPS: Some of you may not be familiar with
18 the process that we go through here and I thought it might
19 be helpful. The Commissioner covered most of it, but this
20 is one of eight hearings that we'll be having throughout
21 the state on this rule. And the final hearing will be in
22 Martinsburg early next month.

23 The plan is, as the Commissioner said, we

1 will take into account all the comments that are made at
2 the public hearings, plus all the written comments that are
3 due in by October 8th.

4 The Finance Committee and primarily the
5 staff of the Division will consider all those comments and
6 all those comments will be evaluated and ultimately
7 incorporated in a revised rule which the Finance Committee
8 of the Council will then go over and we will make a
9 recommendation to the full Council for approval of the
10 final Rule 9 in the Risk Management rule.

11 Our target is to complete this work and
12 have an approved rule around the first of November. That's
13 a very ambitious schedule but it's one that we are going to
14 try very hard to adhere to.

15 And the last comment I will make would be
16 just to reiterate the two comments. One was made by
17 Commissioner and one that was made by Ed Staats, and that
18 is that one of things that is of concern but we think it's
19 going to be manageable, is how the Division is going to be
20 able to implement these rules.

21 These rules are going to require a high
22 level of expertise in certain areas. It's going to require
23 some folks maybe that aren't on staff. So that's going to

1 be an issue the Division and Council are going to have to
2 deal with. Thank you, Commissioner.

3 COMMISSIONER RICHARDSON: Thank you, Mr. Epps.
4 Mr. Jarrett, would you care to say anything today?

5 MR. JARRETT: No.

6 COMMISSIONER RICHARDSON: Mr. Tucker?

7 MR. TUCKER: No, sir.

8 COMMISSIONER RICHARDSON: Mr. Bailey?

9 MR. BAILEY: No.

10 COMMISSIONER RICHARDSON: Mr. Sullivan?

11 MR. SULLIVAN: No, sir.

12 COMMISSIONER RICHARDSON: Anyone else have any
13 comments for the good of the order?

14 (No response.)

15 COMMISSIONER RICHARDSON: Well, let me again
16 thank you for being here today. I hope that this has been
17 informative for you, and I hope you'll take a long, hard
18 look at the regulations, get with your accountants and
19 lawyers, any folks that you ask for consultation on these
20 types of matters and please gives us your feedback. It's
21 very critical.

22 This in many ways is the most important
23 initiative that we've undertaken at Workers' Compensation.

1 Thank you so much for attending.

2 (Whereupon, the public hearing
3 was concluded at 2:35 p.m.)

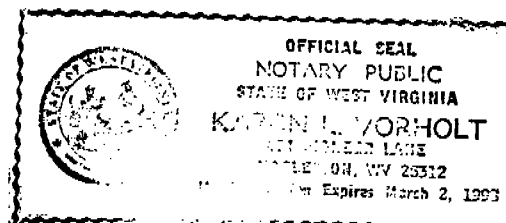
REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to wit:

I, Karon L. Vorholt, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the testimony adduced or proceedings had in the aforementioned case as set forth in the caption hereof.

Given under my hand this 17th day of
September, 1996.

Karon L. Vorholt
Certified Court Reporter



ORIGINAL

WEST VIRGINIA WORKERS' COMPENSATION DIVISION
BUREAU OF EMPLOYMENT PROGRAMS

DEP-LEGAL DIVISION

96SEP26 AM 7:41

RE: Public Hearing on
Rule 85 C.S.R. 9, "Risk Management"

Transcript of proceedings had in the
above-entitled matter held at the Barboursville Holiday
Inn, Ballroom No. 1, Route 60, Barboursville, West
Virginia, on the 12th day of September, 1996, commencing at
9:12 a.m., pursuant to notice.

KARON L. VORHOLT
Certified Court Reporter
634 Pioneer Lane
Charleston, West Virginia 25312
(304) 984-1242

APPEARANCES: PERFORMANCE COUNCIL MEMBERS:

Thad D. Epps

Chris E. Jarrett

Fred Tucker

Everett Sullivan

Paul E. Thompson

Davis Harris

ALSO PRESENT: ANDREW N. RICHARDSON, Commissioner
Bureau of Employment ProgramsRANDALL B. SUTER, Counsel
Legal Division

Reporter's Certificate 91

1 MR. JARRETT: We are going to begin with a
2 presentation put on by the Staff of Workers' Comp
3 Commission. Mr. Ed Staats is going to kick it off. The
4 presentation will consist of about 40, 45 minutes and then
5 we'll have a Q & A afterwards. Ed, if you would, please,
6 go ahead.

7 MR. STAATS: Thank you, Chris. My name is Ed
8 Staats. I'm the Chief Financial Officer of Workers'
9 Compensation, and I want to welcome all of you to this
10 public hearing on a plan to finance Workers' Compensation
11 in the future known as Series 9, "Risk Management."

12 This rule, proposed rule represents another
13 milestone along the evolutionary road that we have chosen
14 to change Workers' Compensation in the state of West
15 Virginia.

16 The direction that we have established has
17 generated significant interest as illustrated by your
18 presence here today. I should say we've had two other
19 public hearings on this rule. The turnout and interest at
20 each of those public hearings has also been overwhelming,
21 and we're very, very pleased.

22 The direction that we've started -- when we
23 began to mail this little brochure (indicating) to all

1 approximately 40,000 active employers in the state of West
2 Virginia, we began to receive telephone calls from
3 employers about the concepts.

4 Let me read to you a synopsis of some of
5 those calls. From a moving and storage company in Weirton,
6 It said the people in their office cheered when they passed
7 out that brochure.

8 They were very complimentary about the
9 proposed changes. They've already seen positive changes in
10 their claims management approach and they feel that finally
11 somebody's at Workers' Comp is looking out for them.

12 They were excited about the retros but
13 because -- but their company had instituted risk management
14 programs and because of our methodologies, the impact of
15 those risk management programs had not yet been reflected
16 in their experience modification factor.

17 The Bavarian Inn in Shepherdstown, the
18 manager there called, wanted to have a retro. They wanted
19 to know how they could sign up. They were very excited
20 that somebody's looking out for people that don't have
21 claims. They'll be at the Martinsburg hearing even though
22 it's their day off.

23 A small cabinet maker, their premiums went

1 up and they have been working very hard to control their
2 losses. They want to see multiple classes. They were
3 concerned that someone would keep this rule from going
4 through and they felt that this rule was for the little
5 guy.

6 Exhibits 2 and 3 of your presentation
7 handout reflect the objectives we are trying to achieve.
8 But the objective that most reflects the underlying
9 strategy of this financing plan is on Exhibit 3 which
10 begins "Create a framework."

11 The strategy is a back-to-basics
12 fundamental recognition that the financial ills of Workers'
13 Compensation can be corrected by employers and their
14 employees if the system provides methods for those groups
15 to directly influence Workers' Compensation rates.

16 This financing plan fixes the
17 responsibility for rates with the employers and provides
18 rewards if prevention of work place injuries or illnesses
19 occurs and is reflected in a reduction in the number of
20 injuries.

21 Such a strategy to be successful requires
22 full and complete disclosure to you of all policies,
23 methods, procedures and cost drivers impacting your rates.

1 No more hocus-pocus in ratemaking.

2 How many people in this room can tell me
3 how Workers' Compensation computes your rates? If those
4 two people can't tell me that, then some of their clients
5 are, indeed, in trouble because they're a service provider
6 at DPA. Anybody else? It's been shielded. We don't want
7 to do that anymore. You need to know in order to be able
8 to impact those rates.

9 We encourage you to review the rule,
10 comment accordingly. A detailed presentation of this rule,
11 due to its sheer size -- I think it's 62 or 3 pages right
12 now, is simply not feasible. As you will hear a little bit
13 later there are planned educational approaches. Did I see
14 the Commissioner?

15 COMMISSIONER RICHARDSON: Go ahead, you're doing
16 a great job.

17 MR. STAATS: Thank you very much. There are
18 planned educational approaches coming up. Their purpose
19 will be to further reveal and disclose the impact and to
20 educate people in how your rates are determined and what
21 you can do about them.

22 My risk management team in this
23 presentation only intends to hit the high spots of the

1 concepts here.

2 Let me introduce you to the members of
3 those teams. First of all is Cheryl Ranson. Cheryl is a
4 certified public accountant. She has a degree in
5 mathematics, physics and science from WVU. She has a
6 degree in accounting from the University of Charleston.
7 She has six years of private sector accounting and
8 management experience, along with eight years as an
9 instructor in mathematics and physics.

10 Amy Graves. Amy is a graduate of Purdue
11 University with an M.S. in management and a graduate of the
12 University of Michigan with a B.A. in economics. She has
13 five years' experience in the life, health, property &
14 casualty industry with CNA and MetLife, as well as three
15 years' experience with Travelers as an account analyst in
16 underwriting, pricing and marketing Workers' Compensation
17 coverages.

18 Randy Suter. Randy's from our Legal
19 Services Division. He's a 1978 graduate of the West
20 Virginia University College of Law. He has experience in
21 private practice as well as 16 years' experience with
22 various state agencies.

23 And finally, Chris DeAngelis. Chris has a

1 B.A. in finance and actuarial science from the University
2 of Illinois. He has seven years' experience in property
3 and casualty insurance, including pricing and reserving of
4 Workers' Compensation coverage. He's worked with such
5 companies as Allstate, Kemper and St. Paul. Chris is going
6 to discuss ratemaking.

7 MR. DEANGELIS: Good morning.

8 (Response: Good morning.)

9 MR. DEANGELIS: As Ed said, I'm going to talk
10 about ratemaking. And when we talk about ratemaking, we're
11 referring to the formulas, the methods, the parameters, the
12 assumptions, all those things that go into calculating the
13 classification base rates as well as each individual
14 employer's rates and premiums.

15 I'm sure for many of you, ratemaking -- you
16 feel like the person here in the picture where you're just
17 kind of left hanging. You're not sure how you got there,
18 you're not sure how you're going to get down. And
19 hopefully today we can communicate some of the things that
20 we're trying to do to make the system better.

21 We are talking today about the proposed
22 rule and it's really this rule that gives us the latitude
23 to design some of the changes that we are talking about to

1 improve the system.

2 And as Ed said today we're going to do a
3 very high level overview of some of these changes because
4 really some of the technical concepts and some of the
5 foundation behind the formulas and the methods are very
6 comprehensive and they would take a great deal of time.
7 But as we go forward with implementation over the next six
8 months, we do plan on having educational sessions so that
9 all of you can come and get more detail as to how the rates
10 are calculated and be able to ask some more in-depth
11 questions.

12 What I am going to focus on today is really
13 four objectives that we tried to approach the new
14 ratemaking methodology.

15 Those are, first of all, to have a system
16 where the classification base rates better reflect the
17 costs incurred by those respective industries.

18 Secondly, after the base rates are
19 calculated for each classification the employer's rate is
20 more responsive to their actual experience, so that if
21 they're doing very well and having very little costs their
22 rates will go down and vice-versa, if they're having a very
23 bad experience their rates will go up.

1 Third of all, we wanted to have a model
2 that better illustrates and clearly communicates what are
3 the cost drivers that are really creating the costs from an
4 insurance standpoint for the employer so they know which
5 costs they can control, which costs they have no control
6 over and really have a better understanding of what it is
7 driving the rates.

8 And finally, we wanted to have a model
9 that's more flexible in adapting to changes in the West
10 Virginia Workers' Comp claims environment as well as have
11 the ability to support new alternative rating plans, which
12 will be talked about later.

13 As I have said, the proposed rule is really
14 what is giving us the latitude to design these new
15 formulas, but there's something else that's been happening
16 in this Division for the last couple years that is really
17 the foundation allowing us to go ahead and implement these
18 new methodologies, and those are, the Division has
19 implemented two new administrative systems.

20 One of them, the MIRA system, is just -- is
21 a world class reserving system that allows us to generate
22 case reserves that are very vital with coming up with very
23 good and very solid and accurate projections.

1 The second is the WCIS system and that
2 serves more as a data base for holding the information and
3 being able to abstract and use the information as necessary
4 in going and deriving and calculating rates.

5 Our first objective, though, was to create
6 a system where the people who are creating the costs are
7 paying for the costs. It's pretty simple.

8 So if I am in the widget maker
9 classification, all of the folks who are widget makers
10 incur a certain amount of costs, claim costs to the
11 Division. We're trying to put together -- we're putting
12 together a system that will allocate those costs to all the
13 widget makers. And as a result they will be paying for the
14 cost that they incur.

15 How are we doing this? Well as I said, the
16 new system that the Division has really allows a lot more
17 comprehensive data capabilities to come up with more
18 formulas that better reflect where the costs are coming
19 from, to be able to do in-depth analysis in to how
20 different classifications and different industries are
21 really performing and what they're claims are -- what's
22 happening with their claims, as well as it allows us to
23 have more methods in trying to come up with these

1 projections so that we have some checks and balances. We
2 have some systems in place that can balance what the rates
3 that are generated so that, you know, maybe there's a
4 couple projections that are way off and maybe they're too
5 high or too low. By having more methods we can understand
6 that and look at it from different angles and really come
7 up with a much better projection of what the correct rates
8 are.

9 Two other key components that play a major
10 role in better deriving the classification rates is the
11 field audit which Cheryl will be talking about as well.
12 And that's going to help us to identify where employers are
13 misclassified so that we can get them in the right
14 classification, and the experience in those classes better
15 reflect the industries that should be in there.

16 The second thing will be special projects
17 that will continue to go on in trying to better identify
18 some of the activities that are happening within those
19 industries and classifications.

20 Once we put together and work on the
21 classification rates, the second step is to have the rates
22 more reflective to employer's experience.

23 So if, again, I'm Mr. Widget Maker and I

1 work for Widget Maker, Inc., and my base rate is \$10,000
2 because of my exposure and my rate, but yet my expected
3 losses are a lot higher than my actual losses. Well, now
4 I'm going to get a credit for that and I'm going to be
5 credited \$1,500 to better illustrate the fact that I'm
6 taking initiative and I'm reducing my costs.

7 The reason why we can better derive those
8 rates is because once again we have the ability to do a
9 more comprehensive analysis now that we have more
10 comprehensive data available at our fingertips.

11 We have the ability to look at different
12 industries individually and understand some of the things
13 that are happening and have formulas that are more
14 reflective to what we would expect from the employers in
15 those industries.

16 We have a lot more flexibility in the
17 models. Basically how many years of experience do we want
18 to use, how much weight do we want to give to employer's
19 own experience, how high do we want to limit large losses.
20 And some of these things we have the flexibility to really
21 change between different industries because maybe the
22 things that are happening in those industries are
23 different. Because of that, we feel like we have a system

1 that is more comprehensive and will be more responsive to
2 the rates, to the claims experience that the employers are
3 seeing.

4 Our third objective is to really have a
5 system that more clearly communicates to you, the employer,
6 what is it that's driving my rate.

7 We want to be able to list out the
8 different things that are driving your costs. We want to
9 be able -- we're going to be able to list out whether or
10 not -- what are your serious claims, what are your non-
11 serious, what are your medicals, how much of your rate is
12 really due to expenses and deficit reduction and things
13 like that that you really have less control over versus the
14 claims costs where you really have a lot more control over.

15 We plan on having the billing system better
16 show -- and I just now realized that I put two slides in
17 the wrong order, but this is the slide I meant to have this
18 time -- and that is, we want to be able to show you on your
19 bill, you know, this is what your rate should have been,
20 this is why you have a \$1,500 adjustment credit to rate,
21 because you had better experience. Then you're going to
22 also pay \$600 for administration fees and 900 for deficit
23 reduction.

1 more flexible in that it can support the foundation of new
2 alternative rating programs that are probably more suited
3 to some of you as employers. They're better products, they
4 tend to fit more in line with the types of situations and
5 types of industries that you're in. And so it gives you as
6 a user of the system a lot more flexibility in terms of
7 getting you Workers' Comp insurance.

8 Some of those plans are the group retro,
9 the individual retro and the deductible. And here now to
10 talk about some of these plans is Amy Graves.

11 MS. GRAVES: As Chris mentioned, the ratemaking
12 methodology as well as recent legislation has allowed the
13 Division to now offer various alternative rating plans. He
14 briefly mentioned those to you, but for your reference
15 those plans are all discussed in the ratemaking risk
16 management rule, Page 20, Sections 9 through 13.

17 Basically to set the record straight, there
18 are going to be some alternative plans but they are going
19 to be more along the lines of financing options. The main
20 coverage plan will be -- continue to be guaranteed costs
21 and self-insurance.

22 The alternative plans that Chris mentioned
23 that will be offered in terms of rating plans are a

1 deductible plan, an individual retrospective rating plan, a
2 group retrospective rating plan, as well as an adverse risk
3 plan.

4 What I want to do is ask and try to answer
5 three main questions. One is, what are all these ratings
6 plans and which one is best for me? And I'm guessing
7 that's a question that each of you probably have.

8 The second question that you might be
9 having is, okay, now that I know which one I really want to
10 choose, how do I elect coverage under that plan and -- or
11 will I be mandated under that plan.

12 And then three, once I'm eligible for a
13 plan and I've been covered under a certain plan, how is my
14 eligibility for that plan going to be reviewed to determine
15 if I can continue to be eligible for coverage under that
16 plan.

17 So with that, I'm going to answer the first
18 question here. Which plan is best for me and what are
19 these plans?

20 The deductible plan is very similar to your
21 -- it's almost like your personal automobile policy. In
22 exchange for choosing, say, a \$200 deductible, you get a
23 reduction in your premium.

1 Well, there's really not much difference
2 here in Workers' Compensation. Obviously, the coverage is
3 different and the deductible will probably be a little bit
4 greater.

5 Basically it's almost very similar to self-
6 insuring a portion of your claims costs for a reduction in
7 premium.

8 So if you're an employer that can bear the
9 financial responsibility or in the event if you were to
10 have a loss and pay the full deductible amount, then a
11 deductible plan would be something that you would be
12 interested in.

13 The individual retrospective plan is a
14 little trickier. It's offered to employers based on their
15 premium size as well as on their loss experience.

16 What would happen if you were to say you
17 wanted to be covered under an individual retro plan: you
18 would submit an application at that time, you would be
19 assessed a standard premium, a premium that you would
20 generally pay under the traditional guaranteed cost plan.

21 However, if after your coverage period, say
22 if you've incurred losses less than what was originally
23 expected then you would have a premium rebate at the end of

1 that coverage period.

2 However, it works both ways. If you were
3 to have losses greater than expected over that coverage
4 period, at the end of that coverage period you may then be
5 assessed an additional premium at the end to make up for
6 that difference.

7 Basically, what an individual retrospective
8 rating plan does, it allows employers to have more
9 immediate control over their resulting premium based on
10 their loss experience.

11 So, for example, if you're an employer that
12 feels that over a short coverage period, say in the annual
13 period, that you could substantially reduce your losses,
14 then that would be a coverage plan that you would want to
15 choose.

16 If, however, you are an employer that
17 consistently has greater than expected losses, then an
18 individual retro plan might be something that the Division
19 would mandate that you would be covered under. So it does
20 work both ways, but it is a very unique plan and something
21 very different.

22 The next plan is a group retrospective
23 rating plan. The way that the policy is rated, the premium

1 that you pay, obviously not much different than the
2 individual retrospective plan. The only difference here is
3 that this plan is primarily intended for groups of
4 employers.

5 However, it's not just a group of any
6 employers. These employers have to be within similar
7 classifications and have a similar business operation.

8 Now the number of groups that will be
9 possible as yet to be determined, but that is something
10 that as we go through implementation will be finalized.

11 Basically what a group retrospective plan
12 does, it allows a smaller employer the opportunity to group
13 with other employers and thus have a greater impact on
14 their own premium rates and how their premiums are
15 determined.

16 Finally, the adverse risk plan. The word
17 adverse probably tells you a little bit about this plan
18 already. Basically this plan is designed to provide a
19 surcharge to those employers that have substandard levels
20 of performance.

21 By substandard, meaning employers that are
22 not currently complying with the rules and regulations
23 stated in the rule before you or employers that have had

1 tremendously bad loss experience and really don't seem to
2 be taking much of an effort in reducing those claim costs.

3 In the adverse risk plan, employers would
4 typically be mandated under this plan for those reasons and
5 the surcharge would be assessed based on the reasons for
6 placement into this plan.

7 Now, any mandates into this plan are not to
8 be taken lightly. Obviously, this would have a tremendous
9 adverse impact on employers. Therefore, any mandate into
10 this program would have to be approved by the Performance
11 Council.

12 There is one benefit to this plan.
13 Obviously, it's a benefit to the Division, but the one main
14 benefit to employers is that it would allow those employers
15 who are currently complying with Division's rules and
16 regulations not have to take the brunt for those employers
17 that are not currently following rules and regulations.

18 If you look at the premium dollars that the
19 Division collects in terms of a big pot of money, if those
20 employers that have substandard levels of performance are
21 being surcharged, that then means that the employers that
22 are following along the line, don't have to be charged as
23 much to make up that big pot of money. So there is a

1 benefit to employers that are doing the right thing.

2 Under the second question you maybe have,
3 okay, I've got a little bit better idea about some of these
4 plans. One question you might be asking, okay, how do I
5 sign up? How do I qualify?

6 Basically as we go through the
7 implementation there will be applications that will be
8 developed. If you have an interest in a particular plan,
9 say a deductible or a retro, you would apply for that
10 specific coverage plan. And then you would provide the
11 Division with any requested information.

12 For example, in a deductible plan because
13 there are some financial responsibilities pertaining to the
14 deductible there may be additional financial information
15 that would be requested from the employer. That
16 information would then be submitted by the employer to the
17 Division representative, which we would call an
18 underwriter. They would review that information and then
19 determine if the eligibility requirements have been met for
20 that particular plan.

21 Upon approval of the election that an
22 employer has made, the underwriter would then document what
23 coverage plan the employer's covered under and what would

1 be the actual coverage period.

2 Now the mandate process works fairly
3 similarly. The only difference is that it is a mandate.
4 There really aren't a lot of options, and that is something
5 that would not happen without -- it would happen with just
6 as much analysis and review as election process. It's not
7 something that is going to be taken very lightly.

8 The final question, okay, I'm in a plan.
9 I've been covered for, say, a year. How do I know if I can
10 continue under this plan or how can I choose a different
11 plan if I don't want to be covered under this plan.

12 Basically there will be two types of review
13 that will happen in the Division for each employer.
14 There's going to be a scheduled review. This review will
15 typically happen with the receipt of field audit
16 information that Cheryl is going to talk to you about or at
17 the end of a specific coverage period.

18 This review would be very similar to review
19 that happens when employers decides for less coverage. For
20 example, an underwriter would look again at some financial
21 information. You may have to send in another application
22 with additional information about your business activities,
23 and that will be reviewed.

1 If you have any employees that need to be
2 included from coverage or have special coverages, that
3 would be something that would be reviewed at that time.

4 And again, a decision for eligibility would
5 be made, the same as it was made at the very initial
6 submission of the application.

7 The other type of review that would happen
8 is what we call an ad hoc review. That review can be
9 either initiated by an employer. For example, if an
10 employer has changed their operation, they've gotten
11 additional employees that need to be excluded, maybe
12 they've changed their location or their name. That would
13 be something where the employer should really take the
14 initiative and contact the Division and let them know that
15 a change has occurred and maybe another review should be
16 made to determine if eligibility is still there.

17 Another form of ad hoc review would be
18 initiated by someone within the Division. Particularly,
19 let's say, if a claims representative or a claims
20 specialist notices that a claim has occurred that really
21 doesn't quite match the classification that a particular
22 employer is in. In that circumstance, that claim
23 representative might contact the underwriter and say, "Hey,

1 something doesn't seem quite right here. Can you review
2 the account and see if we're still in the same
3 classification."

4 So those are the two types of
5 classifications that will be made, two types of review that
6 will be made. And the bottom line is that the
7 responsibility should not be one sided. It should be
8 basically shared by both employer and Division
9 representative.

10 So those are the three answers to some of
11 the three questions that you might be having. I hope each
12 of you have a better idea now about the various plans.

13 You'll notice in the very back of your
14 presentation materials you have a short survey, and one of
15 the questions on that is if you have a particular idea in
16 mind after hearing this presentation for the coverage plan
17 you might be interested in, we're trying to get a feel what
18 the interest is out there and that will greatly help us in
19 our implementation efforts.

20 Now Cheryl's going to talk to you a little
21 bit about the field audit process and the credit management
22 guidelines.

23 MS. RANSON: I'm going to be starting with

1 Exhibit 14. I know that most of you in this room have been
2 inundated with information so far. You've gotten one of
3 these, right, and you've gotten this huge rule and you've
4 gotten your pamphlet.

5 What we're going to start talking about a
6 little bit right now is what I consider to be some common
7 sense that goes along with this rule and the guidelines and
8 how we came up with this rule.

9 The first thing I want to talk to you about
10 is something that we discovered when we were out conducting
11 pilot field audits, and that is while we were conducting
12 these audits approximately one-third of the employers in
13 one of the sections of the audits we found were
14 misclassified, one-third.

15 That means of these three rows, for the
16 people in these rows, that one entire row is misclassified.

17 Now if you are the employer who is in the
18 lower risk classification, do you want that misclassified
19 row in with you? No. But something we might not have
20 thought of, if you're an employer that's in the high risk
21 classification, don't you want them in with you so you can
22 get their premiums, to be out of your pool, sure.

23 So this is a problem. This is something we

1 have to take care of. How could this happen? Well, we
2 looked at a couple examples. First of all, for example,
3 loggers might be classified as truckers. How can that
4 happen? Loggers drive trucks. They truck their logs
5 around. That can happen. Neon glass manufacturers
6 classified as advertisers. Exactly, what do you see in
7 front of stores?

8 SPEAKER: Neon advertisement.

9 MS. RANSON: Neon advertisement, exactly. Which
10 is more dangerous, that sign or working with that gas?
11 I'll let you guys decide that.

12 High risk occupations classified as
13 clericals due to subcontracting. Is every subcontractor a
14 -- I'll use a politically incorrect term, a Kelly Girl?
15 No.

16 Salesmen classified as manufacturers. I
17 worked with an individual who started out manufacturing
18 some items years ago and then changed to something like a
19 Go-Mart type situation where all he did was sell things but
20 he didn't contact the Division. So he's been paying
21 manufacturers rates, and if there's any manufacturers in
22 here, you know that that's a little higher than the sales
23 rate, for quite some time.

1 So if you look at these things -- the
2 Division can take ownership for some of these and the
3 employers can certainly take ownership for some of these,
4 but that's not what we're here to do today. We're here to
5 look forward. And the question is, "What are we going to
6 do about this since we have identified these problems?"

7 Well, what we're going to do is we're going
8 to go out and audit employers. Why are we going to audit
9 employers? Well, first of all, we want to make sure --
10 this first one, that the employers are classified
11 correctly.

12 There is no way that we can identify the
13 employer's true risk or exposure if we don't know what
14 classification they're in. So that's going to be a big
15 part of that field audit.

16 The second is, we want to obviously ensure
17 that employers are reporting payroll correctly. Do you
18 want to be the only employer in your class who is reporting
19 your payroll correctly? Probably not. You want to make
20 sure everyone's reporting their payroll correctly. Is that
21 the fair thing to do?

22 And then the last one, we had identified
23 possible safety and loss control candidates. Some

1 employers run great shops, safe shops; other employers have
2 shops that are accidents waiting to happen. And they've
3 been lucky. But that luck's not going to hold out.

4 So we will be having just preliminary
5 safety and loss surveys that we're going to hand out and
6 the employers will complete them and then we'll pass those
7 on to our safety directors or to some of our underwriting
8 teams.

9 Who are we going to audit? This is
10 something that surprised me. I didn't know this till this
11 year, now that we have our new computer systems in we're
12 starting to get out some statistics that we can look at
13 these things. Approximately 4,500 employers out of 40,000
14 represent 85 percent of our premium.

15 So just think, if we can go out and audit
16 these employers and we can get them classified correctly,
17 we're going to have 85 percent of our premium classified
18 correctly. Do you think that might help with the rates?
19 Make it a little bit fairer?

20 We're also going to take a look at some
21 classes. There are certain classes that have a history of
22 under reporting or possibly default or being misclassified.
23 So we're certainly going to take a look at those.

1 And then the last section is something I
2 want to point out to you today since I get a chance to talk
3 to you. Employers can contact us. We get calls from
4 employers saying, "XYZ company is operating down the road
5 and they're not paying Workers' Comp, and I can't be
6 competitive with them." And we send somebody out and audit
7 them. So, you know, if you know of people out there who
8 aren't paying Workers' Comp, you need to contact us.

9 What are we going to do once we get there?
10 Well, this first section hit the highs of what we're
11 talking about. We're going to look at the premiums to make
12 sure people are reporting and paying correctly.

13 We're going to classify them. We want to
14 make sure again that people are in the right
15 classification. That is critical to ratemaking. Chris
16 told you that. Anybody that knows a little bit about
17 ratemaking, the people sitting in here in this audience who
18 -- they know how crucial it is that employers are in the
19 right classification.

20 And then, of course, the safety review,
21 which is something that we're placing a lot more emphasis
22 on lately, safety. We're going to have the qualified loss
23 management programs coming down the pike, and we want to

1 emphasize that employers can reduce their costs by running
2 safe shops.

3 How are we going to do this? You're
4 probably saying, there's no way that Workers' Comp can send
5 people out and audit 4,500 people in the next 18 months,
6 and you're right.

7 What we're going to do is we're going to
8 submit or put out a request for quotations from certified
9 public accountants and public accounting firms in local
10 regions. The state will be divided up into four regions.
11 We'll pick firms out of those regions and they'll go out
12 and do the auditing for us.

13 We'll manage that with a small internal
14 staff who will assign the audits, and they'll work with
15 quality control. They'll check to see audits were correct
16 and pass in line if there needs to be some adjustments.

17 And when are these going to begin? January
18 of 1997. The first 4,500 we would like to get done in 18
19 months because we know how critical that's going to be to
20 our new ratemaking methodology. And then after that we are
21 going to have regularly scheduled audits. Random basis,
22 some people hit more often than others, depending on
23 materiality.

1 So some people out there who have been
2 playing the odds that they're never going to get audited by
3 Workers' Comp, those odds are going to swing more in
4 Workers' Comp favor and in your guys favor.

5 The next part that I want to talk about is
6 really Section 14 of the rule. And again, we go back to
7 our common sense. Wouldn't it be nice -- wouldn't it be
8 nice if the Division took their premiums from those who are
9 willing to pay to those who should pay. It would be great,
10 wouldn't it? Because what happened if everybody doesn't
11 pay. The people that are paying are the ones who are going
12 to continue to pay and pay more. So wouldn't it be great
13 if this rule could do this? Wouldn't it be great if this
14 rule could be proactive rather than reactive to employers.

15 I know we all read about the extreme cases
16 in the paper where an employer owes us a billion dollars or
17 whatever. How could that have gotten that far?

18 This rule is going to allow us to work with
19 these employers earlier. And some of these employers, it's
20 not always a matter they just don't want to pay. They
21 might not be able to pay that large amount each quarter.
22 So we're going to be able to do something about that.

23 And then the last one, wouldn't it be nice

1 if we could get some of our premium money earlier and
2 invest it earlier. That's going to give us a larger pot of
3 money to work with. So you might think to yourself, well
4 if we have more money to work with what's going to happen
5 to our rates? Are we going to need as much money from you?
6 Probably not. Hopefully not.

7 So there's two main parts to this section
8 and I'll go over this briefly. The first one is, we're
9 going to give each employer a tax liability. This has
10 never been done before. Workers' Comp has always treated
11 employers the same way whether they're good credit risk or
12 bad credit risk. They don't do that in private industry.
13 Those of you sitting out there, do you do that in your
14 receivables department? I don't think so.

15 We're going to give employers credit
16 ratings. Those credit ratings can be tied to the plans
17 that we're going to -- that employers can apply for. But
18 it's also going to be tied to how quickly employers make their
19 deposits, which is the second one.

20 The Division will determine the frequency
21 of deposits. Now as you read the rule, if you start --
22 feel like you're going around in circles in this rule,
23 under deposit section. Talk to your CPAs, talk to the

1 accountants, the people who are doing your payroll because
2 these deposit rules mirror the 941 payroll tax deposit
3 rule. If any of you are CPAs out there or accountants out
4 there, you can see that. You'll see that if you read your
5 rules.

6 Poor credit rating, I'm not going to go
7 over the obvious things that you will look at, such as the
8 company's financial statement, but there are some
9 intangibles that we will look at, such as, what type of
10 business entity, what type of industry. Is this industry
11 in a decline? If this industry is in a decline, they may
12 not be a good credit risk, at least not for very long.

13 What's the prior management history. Has
14 the Division had trouble with the owners of this company in
15 the past? Have they started a company, not paid, shut it
16 down, started another? We've taken care of that in this
17 rule.

18 One of the things I want to point out in
19 your tax liability rating, this number 100,000 looks pretty
20 large. That does not mean if you are a small employer that
21 you cannot be an A tax rating. You can be a small employer
22 and have a \$5,000 tax liability. That is a fact that's not
23 listed.

1 And the last thing that I want to point out
2 about the deposits, which is Exhibit 20, and if there are
3 any accountants out there that say now this looks familiar
4 to me, where we have your annual deposits. If someone pays
5 us -- only owes us \$500, why should we -- why should they
6 have to fill out forms every quarter and why should we have
7 to process those forms every quarter. We don't want to do
8 that, you don't want to that.

9 So at the Division's discretion, and again
10 depending on credit rating and history, we're going to
11 allow you just to pay once. Write a check, and then at the
12 end of the year settle up. But you will notice as you go
13 through this, when you get toward the bottom, the C rating,
14 what happens, we want our money faster, okay.

15 And again, it doesn't go to whether you're
16 a good employer or a bad employer. You might not be able
17 to make that quarterly payment but you can make a weekly
18 payment. So we're going to get our money faster and that's
19 going to help us manage our receivables better.

20 The next slide which I'm not going to go
21 over, that's very similar to the 941 rule for those of you
22 who are accountants, and you can look at that at your
23 leisure.

1 Slide 22, I want you to disregard. That is
2 actually the same slide as Slide 21 but it got a different
3 title on it.

4 And then the last one, you're probably
5 sitting there thinking, what if I miscalculate and I don't
6 deposit enough money. That's probably what I'd be asking.

7 We do have what we call "safe harbor" --
8 again, that's an IRS term for that -- where if you deposit
9 about 98 percent of your money, you know, that's fine. And
10 then there will be a make-up day that you can deposit that
11 extra two percent. But if you don't deposit at least 98
12 percent and you don't make that make-up day, then you will
13 be subject to penalties and interest.

14 And then the last section, just some odds
15 and ends, questions. You can look at those at your
16 leisure. The one question I want to point out is, the IRS
17 is moving to electronic funds transfers. You've all read
18 about that in the paper and you want to know are we going
19 to do that. Well, we have to walk -- crawl really before
20 we walk. So we are going to do that, but that's going to
21 be in the future. We have to get this whole deposit thing
22 worked out and get the bugs out of it before we attempt to
23 start doing electronic transfers.

1 And now Ed Staats is going to talk to you a
2 little bit about certain things that you might anticipate
3 will be coming down the road.

4 MR. STAATS: Thanks Cheryl. A couple -- one
5 point, Cheryl talked about the bi-annual \$500 limitation
6 you file once a year. Some of the information we've got
7 indicates to us that that will impact over 13,000 small
8 businesses in the state. That is a significant impact on
9 their effort.

10 Does anybody remember the ketchup
11 commercial several years ago where it's kind of a white
12 background on TV and there was a bottle of Hunts ketchup
13 turned up like that (indicating) and it just kind of slowly
14 oozed out. And in the background was Carlie Simon singing
15 "Anticipation." Anybody remember that commercial? Well,
16 that's what you can expect in the implementation of this
17 rule.

18 Section 19, 1 and 2, on Page 60 of the rule
19 talks about the implementation time frame. And even though
20 over the past several years we've drafted changes in claims
21 management, financial reporting, receivables management,
22 upgrading of our people skills, upgrading of technology,
23 redesign processes, expansion of statutory authority and

1 the development of a constant vision for a better West
2 Virginia Workers' Compensation system, those foundation
3 pieces so necessary to the implementation of this financing
4 rule, this plan has still not overcome all the obstacles we
5 face in the system, all the obstacles we face in order to
6 bring you better value of the system.

7 The rule that you have in your hand did not
8 just come up one night and we sat down and wrote it. That
9 rule started several years ago. The development of that
10 concept started. Some of the processes that we went
11 through included a complete market analysis of the State of
12 West Virginia, a complete economic analysis of the state of
13 West Virginia and the impact of Workers' Compensation on
14 this state.

15 A complete analysis of the best practices
16 used in other comp systems across this country, including
17 Washington, Oregon, Ohio, Colorado, Wyoming, Rhode Island,
18 California, and we took the best of the best and blended it
19 to meet what we thought are market needs were.

20 The obstacles that we face include a
21 critical need to clean up information, for example, in
22 classification audits, a critical need to support a very
23 sophisticated technology system, a critical need for

1 changing our existing complement of human skills to include
2 insurance and risk management skills that are possessed by
3 people committed to do whatever it takes to improve this
4 system.

5 A critical need to communicate with and
6 educate our stakeholders to understanding the impact of
7 their actions. A willingness, for instance, on the part of
8 the Fund to simply admit when we make a mistake, because we
9 make a lot of them, and some of you get stonewalled.

10 I'll give you an example. We've
11 implemented a process improvement program at Workers' Comp.
12 The slide that Cheryl mentioned is an illustration of
13 improving that process and acknowledging our mistakes.
14 That slide is incorrect. We make mistakes. And we are not
15 going to cure this system unless we are willing to
16 acknowledge that.

17 A critical need for commitment by our
18 stakeholders to support these improvements, a critical need
19 to avoid something that you're familiar with, we call it
20 organizational procrastination.

21 A critical need for our stakeholders to
22 understand that this financing plan is long term in nature
23 and it will definitely change how we all do business.

1 The obstacles to success are very great,
2 but our Fund is so much more capable of implementing this
3 type of sophisticated financial plan than it has ever been
4 before. And like all successes, every solution has its own
5 set of problems, and this rule will create additional
6 mischief.

7 Employers, for instance, will be inundated
8 with proposals from organizations developing loss control
9 programs, offering associations with plans to include
10 administration of the various types of financing programs.
11 And employers will have to judge those proposals on what's-
12 in-it-for-me basis, who will do the best job for me or my
13 group, what are the services you're going to receive, what
14 kind of risk is involved with you being part of a group,
15 how does that impact your total investment on loss control.

16 The rule also requires the exercising of
17 informed, skilled judgment by Fund personnel. Failure to
18 do so will create inequity beyond those we are attempting
19 to cure.

20 The rule requires adherence to new policies
21 and procedures by employers and your representatives as
22 established under the authority of the Performance Council
23 with adequate safeguards built in for review and reversal

1 of improper judgments or abuses. Failure to develop these
2 safeguards will result in additional mischief.

3 But there are anticipated benefits of
4 success, the greatest of which is -- and the most
5 significant which is the opportunity to share what's going
6 on in the rest of the country.

7 All across this country there are stories
8 and examples of successes where employers and their
9 employees working together have prevented injuries, have
10 reduced their Workers' Compensation costs and have shared
11 the benefits.

12 This rule encourages the development of
13 those successes in this state. The benefits to this state,
14 to all of us, are a more financially sound, more
15 financially viable Workers' Compensation system thereby
16 improving the State's overall financial health. That
17 benefit is available for all of us. It is a win for all of
18 us except for those who do not attempt to control and
19 prevent injuries.

20 As under this rule they will be more
21 responsible for paying the costs of ensuring their risks.
22 And this approach is not intended to allow the shifting of
23 that risk to other employers in the state.

1 We hope we're on the right track. The
2 feedback we've received so far indicate we're going in the
3 right direction. We are asking for your input to keep us
4 going in the right direction and to help us guide -- help
5 guide us into the system that you want.

6 Randy Suter is going to spend some time
7 moderating questions that you may have. Thank you very
8 much for your attendance today.

9 MR. SUTER: It's a nice crowd. Well, large
10 crowd. We'll see how nice you are.

11 This portion deals with questions and
12 answers. I want to be very plain that this is not the
13 public comment portion.

14 The individuals that want to make comments
15 with regard to what is in the rule will have the
16 opportunity to do that at the close of the educational
17 presentation, but we would like to hear your questions.
18 Any questions? Yes, sir. And please when you stand up,
19 clearly identify yourself so that the court reporter can
20 get that information, and ask away.

21 MR. PRICE: My name is Mark Price, Lannes,
22 Williamson Pallets. I would like to know when these rules
23 are planning to take effect? Do you have a date

1 established when we will be responsible for these rules?

2 MR. SUTER: That's sort of a double question and
3 fortunately I'm going to answer it. I'm a lawyer so I can
4 maybe give you two answers.

5 The first is that the Performance Council
6 has made a commitment to put this rule into place --
7 obviously depending on public comment -- on or around
8 November 1, 1996. That is prior to the election. That
9 will be in the early part of November.

10 It's one of those rules that perhaps has
11 transcended politics and we realized that there are cures
12 that need to be made, and the Performance Council and the
13 Legislature has requested that we provide those cures.

14 The second question -- the second answer,
15 at least, deals with when will this rule be implemented.
16 Mr. Staats addressed that a little earlier in his
17 presentation.

18 We could not shock the system of Workers'
19 Compensation by on November 2nd, saying, "Here, we have
20 these final plans. We have everything in place." We'd by
21 lying to you if we told you that we had everything in place
22 to put this together.

23 The goal is to implement all portions of

1 the rule on or around, by July 1st of 1998. We can phase
2 in different product lines, we can acquire the skills
3 needed to address the needs that we're going to have to
4 better serve you. Yes, sir.

5 MR. EBAR: Jim Ebar. I've heard a lot of mention
6 of the safety kinds by the Performance Council. As a
7 construction firm representative, I would like to meet the
8 Council unless that was intending to happen later on in the
9 program.

10 MR. SUTER: Well, Mr. Ebar, at the conclusion of
11 this --

12 MR. EBAR: Okay.

13 MR. SUTER: -- we're going to have some words
14 from the Commissioner, and I think the Commissioner will be
15 more than happy to introduce all these gentlemen to you. I
16 could do that right now but I don't want to steal his
17 thunder. He's my boss. Any other questions? Yes, sir.

18 MR. PORTER: Jerry Porter with SMC Electrical
19 Products here in Barboursville. Two questions. One,
20 employers with a positive balance at the present time in
21 Workers' Comp accounts -- as far as the past goes, or
22 reading briefly through this bill, I see it goes back three
23 years on the deductibles on your experience ratings in some

1 of the plans.

2 What happens to positive balances if you
3 have positive balances? That's one thing. If it's used in
4 determination of your rate calculations to go back beyond
5 three years? That's one question.

6 MR. SUTER: Well, let's stop with one question
7 and we can maybe be able to give you the answer to that
8 one. I'd like to defer that one to Chris.

9 MR. DEANGELIS: Without getting too technical,
10 the experience rating formula has changed to be more
11 reflective of an actual losses versus an experienced loss
12 -- or an expected loss, I'm sorry. And so if you have a
13 positive balance, it's probably because your losses have
14 been less than what you had expected.

15 And so given that, in the experience rating
16 formula in comparing the last, let's say, three years of
17 your experience versus what was expected based on the rates
18 you paid, if you have paid a lot more than your
19 modification factor will be lower, and that will adjust
20 your rate in the future to be lower as well.

21 MR. PORTER: Well, that wasn't my question. Is
22 it limited with three years or does it go back beyond three
23 years? In other words, are you just going to use three

1 years past experience regardless of going back?

2 What happens to the money? Let's say we
3 got \$100,000, okay. And the last three years it comes up
4 our experience rating might not be that good, but yet we
5 have this big positive balance. What happens to that
6 money? Do we get a credit for it?

7 MR. DEANGELIS: I understand what you're asking.
8 It depends really on the industry, I would say. In part of
9 the determination in Section 7, what we have is the ability
10 to change that from three years to, let's say, five years
11 if it's something that happens to be in industry where
12 losses come in over a long period of time. It really
13 depends. Some of those determinations have yet been made,
14 but if you'd like to make some comments on behalf of your
15 group or the way you feel about that, then we'd certainly
16 be happy to --

17 MR. PORTER: Well, it comes out as a concern, if
18 you have a positive balance and you lose a lot of money,
19 you know, in the transition, that you've built up in the
20 past. That's a concern. No comment. It was a question.

21 I think it's common sense, the common sense
22 thing, you stand to lose money by what you're going to if
23 you built it up over a period of time and be penalized for

1 good performance. We'll that's our concern. Another
2 question, if I may.

3 MR. SUTER: Certainly.

4 MR. PORTER: On the deductible, for example, if
5 it goes to 10,000, 20,000, whatever, deductible limits you
6 take, and then if you go into that deductible as first
7 commented, it's kind of like self-insurance premium policy,
8 I understand that. And then on the experience rating and
9 the other, is what you pay in deductible, would that count
10 against you in your experience rating even though you paid
11 cash for it or would it be offset? And that's my last
12 question. Thank you.

13 MR. DEANGELIS: An experience rating calculation
14 is going to happen no matter which product you take. It's
15 going to be based on your entire loss base.

16 What happens is that in a deductible you
17 are given a credit for assuming that portion of the risk.
18 So there may be -- in looking at all the data, we would
19 come up with maybe -- let's say there's a \$10,000
20 deductible, we would be able to figure out, okay,
21 approximately what percentage of everyone's losses for the
22 first 10,000, and let's say it's 15 percent or 20 percent.
23 Then that's the credit that would be assigned. But that is

1 after the person's rate has been developed based on, you
2 know, their ground/up losses.

3 MR. SUTER: If I may, just for a second.
4 Traditionally Workers' Compensation has communicated to
5 people what the costs are that were charged during that
6 particular year.

7 In other words, you had \$20,000 in Workers'
8 Comp costs. An employer over here says, "But, gee, I paid
9 \$30,000 in Workers' Comp premiums." That's the cost of
10 that insurance.

11 That portion of your premium, the
12 additional sums went to pay in large part for other
13 employers who had bad experience. It's just the same as if
14 you're paying for your car insurance. And one year you
15 have a catastrophic accident and you had 100,000 --
16 somebody's filed a claim against you. You had to pay out
17 \$100,000 or your insurance company has. Well, you can go
18 back and trace all the premiums you've paid to that
19 insurance company over the course of time and at no time is
20 it going to approach \$100,000.

21 So when you look at positive and negative
22 balances, you have paid a sum of money for the
23 classification that you're in. Some people in that

1 classification have had worse than average experience, some
2 people have had better than average experience.

3 The problem is that we have communicated
4 that to you by sending you what you may believe to have
5 been a bill every year that says there's been so much money
6 charged in your account. I don't know if I explained that
7 any better or not. Any other questions?

8 MR. MOORE: My name is Richard Moore with Omni
9 Muffler. Since we want to start showing the employers how
10 your rates are calculated, is there any plans to start
11 telling us now? I mean, you're getting ready to send out
12 new statements how you calculated our new rates.

13 MR. SUTER: That's going to be implemented over
14 the course of time.

15 MR. MOORE: How about like September?

16 MR. SUTER: I'm certain that your September
17 statement will be very similar to the ones you've received
18 in the past.

19 MR. MOORE: Which just says I have a rate.
20 You're not going to show us how you calculated the rates
21 specifically?

22 MR. SUTER: Next month it's -- no. That's one of
23 the goals of this rule, sir, is to help communicate with

1 the employers by showing them clearly what's -- as a matter
2 of fact, the formulas are changing significantly in this
3 rule to allow us to have the cost of the system follow the
4 individual employers.

5 MR. MOORE: I understand that. But how about
6 just telling me what I'm getting charged with now. I mean,
7 you're going to send me a rate that says I owe some
8 percent. Can't you just send me the formula, this is the
9 way it's calculated? I mean, there's only two people in
10 the room that knows how they do it.

11 MR. SUTER: I'll tell you what, sir, I'm not one
12 of them.

13 MR. MOORE: That's just an observation.

14 MR. SUTER: I understand, Rick.

15 SPEAKER: You can hand him a copy of this rate
16 calculation.

17 MR. STAATS: That's a very valid observation.
18 That gentleman made a very valid observation. We should be
19 able to hand you something that you can read and it says,
20 "Well, here's my cost. Here's what I'm paying for. If I
21 multiply this times this, that's my rate. Do I agree with
22 those costs or not?" Okay.

23 Well, we can't do that. And the reason we

1 can't do that now is because of all the sins of the past.
2 And there have been policy decisions made by -- forgive me
3 Chris -- actuaries who had no responsibility to the
4 administration of this system.

5 Now we've tried to do a good with it and
6 can't fault on that, but this is a brand new different
7 approach. That's why you've got those representatives up
8 here. I can't give -- yes, I can. I'll give you the
9 formula if you want it but I'll guarantee you it won't help
10 answer your question. And we'd be more than willing to --
11 I'll give it to you. I mean, when I first got there, the
12 first thing I looked at was, "How do they price this damn
13 thing."

14 And as I started going through the formula
15 -- I spent maybe three months trying to figure it out and
16 it didn't make sense if you looked at it from the business
17 sense. It didn't reflect risk, except in an aggregate.

18 This rule is not going to be implemented
19 tomorrow. You're not going to get a statement tomorrow
20 that says here's your rates, here's your new rate and this
21 is how we're going to do it.

22 It is our intention as part of this
23 implementation plan to have some very in-depth educational

1 seminars for you people. And this is a very complex
2 subject. You deserve to know it and you deserve to be able
3 to ask questions about what impact it is. We can't do
4 that. Your observations are valid. It is one of the
5 faults of the system. We can't fix that like that
6 (indicating).

7 MR. PORTER: Well, I happen to know of a shop in
8 Ohio and they sent me one, but I didn't understand it, but
9 they've sent me one.

10 MR. STAATS: I said we picked the best of the
11 best and Ohio was one of the states we looked at. I can
12 tell you that that is not part of the best of the best.

13 MR. MOORE: I agree.

14 MR. SUTER: Yes, sir.

15 MR. SPURLOCK: My name is Darrell Spurlock. I
16 have a small manufacturing business here in Barboursville
17 and I also file quarterly reports for small employers.

18 Does this new plan provide any rate for
19 option out of this Workers' Comp? If you've got 20
20 employees, can you elect out of it and provide some type of
21 a financial security?

22 MR. SUTER: No, sir. However, these plans do
23 provide for other product lines that might benefit you,

1 like the deductible plan.

2 Let's say, for example -- you said you have
3 a small manufacturer company and you wanted to become -- in
4 essence, what you're asking is can I become self-insured?

5 MR. SPURLOCK: Well, some people maybe only have
6 one employee. I have 18 in my shop. I'm not asking for my
7 shop, but some of the people I keep books for them, have
8 one employee. Is there any provision that you can elect
9 out of this coverage for employees?

10 MR. SUTER: No, sir. And the reason for that is
11 that the larger the pool, the more the risk is spread, for
12 one point.

13 The other point is that if you do not have
14 Workers' Compensation coverage in the state of West
15 Virginia, then that subjects the employers to increased
16 liabilities as a result of the loss of their civil
17 immunities.

18 Now if you didn't have coverage or you
19 didn't pay for coverage, what happens when that one small
20 employer is injured on the job and let's say -- I don't
21 know what kind of security you're talking about -- but that
22 employee is injured on the job and he incurs 4- or \$500,000
23 worth of medical losses, and that happens time to time.

1 Now what kind of security is that single small employer
2 going to take?

3 MR. SPURLOCK: Well, my response to that is if
4 you weren't being covered by Workers' Comp, you'd never
5 get to --

6 MR. SUTER: That's one facet of this, sir. Mr.
7 Robinson.

8 MR. ROBINSON: I guess, I just have -- first of
9 all, I have a question. The risk implement in this thing
10 is November 1st. Just leave that as a general comment.
11 But concern is --

12 MR. STAATS: Wait a minute, let me correct that.
13 The rule is not being implemented on November 1st. The
14 rule is intended to be promulgated on November 1st.

15 MR. ROBINSON: Correct. Anyway, the rule is
16 going to be promulgated on November 1st, which by law, that
17 would give you the opportunity to put it in effect,
18 correct?

19 MR. STAATS: Correct. Within the time frame we
20 anticipated.

21 MR. ROBINSON: Right. I guess philosophically,
22 looking through the rule -- I just scanned through it very
23 quickly -- and maybe, Andy, this will give you an

1 opportunity to respond to it -- when I look at the cost
2 reductions in the rule, you know, I like the deductible
3 plan but it talks about securing a bond. If you're talking
4 about \$100,000 deductible, what are we talking about
5 security in bonds.

6 COMMISSIONER RICHARDSON: I'll be happy to answer
7 that one. If you'll notice in the course of the rule there
8 are a number of determinations to be made by the
9 Performance Council. We are looking at a sliding scale of
10 security.

11 Obviously a small employer that wants
12 \$1,000 deductible, for example, is much different than a
13 large employer who may want a 50- or \$100,000 deductible on
14 a claim. So the security requirements are going to vary as
15 a result of that. And that would be a determination made
16 by the Performance Council.

17 MR. ROBINSON: On the group rating, correct me if
18 I'm wrong, I interpreted that under group rating it has to
19 be at least two employers with an aggregate amount of
20 premiums of \$500,000.

21 COMMISSIONER RICHARDSON: Yes, sir.

22 MR. ROBINSON: Is that's the way it's stated?

23 COMMISSIONER RICHARDSON: That's the way it's

1 currently stated.

2 MR. STAATS: And I should say that we are
3 concerned about that cap ourselves, that it may be too
4 high, and we appreciate the input of you folks in this room
5 and your comments.

6 We have a lot of very small companies in
7 West Virginia and that kind of cap may eliminate them from
8 that kind of coverage. That is not the intention. I would
9 anticipate that somebody in comments would say, we think
10 you should have a cap of something less than this, and for
11 this reason -- and if you-all don't make that comment,
12 we're going to do it ourselves.

13 MR. ROBINSON: When you look at the -- you
14 mentioned in the presentation, I think, 4,500 employers
15 make up 85 percent of the premiums. Unfortunately, that
16 leaves 3,500 people out in that mix. I just want to bring
17 to point.

18 A concern that I have philosophically, and
19 maybe you can address this when you give your presentation,
20 doing reclassification and misclassifications and putting
21 in the various plans that we've talked about here, what
22 concerns me is no matter how you change the system it
23 reminds me of a bag of jelly beans. You may have one pound

1 of jelly beans but you have all different colors in there.
2 And what concerns me is some of the small employers in the
3 state, when you do the reclassifications, no matter how you
4 spread the risk, the risk is still there. You still have
5 to come up with it. How are you going to approach it
6 economically within the whole state?

7 MR. STAATS: If you look very careful at the
8 product design, the deductible concept, the group concept
9 and look at the framework that the staff went by the rule,
10 you'll see that Nelson is absolutely right, the risk's
11 still there.

12 At this point in time the requirement for a
13 premium pool about the same size is still there. What this
14 rule does and the strategy underlying this rule is that the
15 results and the prevention of injuries and the reduction in
16 claims occurs before the change in premium.

17 And if you'll look at how it's structured,
18 our responsibility is to have a financially viable Workers'
19 Compensation system. We will help nobody in this room if
20 we don't. Therefore, the strategy has been designed that
21 we have to see the results, that all employers have to see
22 the result before these types of credits are actually
23 anticipated, actually occurs.

1 And if you'll read the rule very, very
2 carefully, you'll see that that is an underlying strategy
3 throughout the framework.

4 MR. ROBINSON: I guess to follow up with that, I
5 don't mean to dominate the question and answer, but one of
6 the concerns that I have, it may be actuary or whoever's
7 the detail person to answer the question, currently in our
8 classification system we have 92 or 94 classifications. No
9 matter how you mix the classifications, you still have to
10 come up with the bottom dollar for that industry.

11 Currently we do have a modification factor,
12 we do have built into the system a plan where the risk -- I
13 mean, if you remove risk, you're going to get a lower
14 modifier which is going to decrease your costs. How is
15 this system going to be different from the current system
16 we have?

17 MR. DEANGELIS: I agree. I understand your
18 question, and to be honest with you the amount of time that
19 it would take to answer that would be pretty substantial.
20 I can certainly talk to you right after this, you know,
21 meeting ends or we're going to have these educational
22 sessions to get more in depth. But basically, part of the
23 things that Ed said is, the new system encourages and

1 empowers employees to control a major portion of their
2 premium. And hopefully by using that as an enabler it will
3 take more seriously the fact that if they can reduce their
4 losses then they're going to reduce more of the costs to
5 the Division which will be translated into the rates.

6 But also we're offering another program.
7 It's a different rule. It's a quality loss management
8 program. It really gives employers the ability to manage
9 risk. It gives them the opportunity to hire some expertise
10 to come in and help them with this issue, to reduce those
11 costs. So yes, we're talking about in a sense hoping to
12 reduce that pot of money but we're also talking -- let's
13 say the pot of money does stay the same. Currently the
14 allocation system is not as accurately fair as it should
15 be. And we're looking to adjust it to allocate the cost to
16 the folks that are creating the costs. And if those folks
17 who are creating the costs choose to ignore the fact that
18 they're creating and they should pay for them, then yes,
19 something won't change and they're just going to get billed
20 more, but hopefully they'll realize that we're also giving
21 them an opportunity to bring in expertise to reduce costs.

22 MR. SUTER: I'd like to start the public comment
23 portion of this. I'd like to introduce the Commissioner.

1 You may have seen him lurking in the doorway there.

2 COMMISSIONER RICHARDSON: Thank you, Randy. Good
3 morning. I apologize for my tardiness this morning. I got
4 stuck behind a truck and then I got to the hotel and I made
5 an error, assuming that it was over in the conference
6 portion of the hotel, as I'm sure many of you did. I had a
7 hard time finding this place, at any rate.

8 I want to thank each of you for being here.
9 I'd like to take a moment to once again recognize each of
10 the individuals that participated in the presentation
11 today, I think did a first-class job and then I'm going to
12 comment just a moment about where we're going with this
13 program.

14 Ed Staats, the Chief Financial Officer,
15 Chris DeAngelis with the Risk Management Team, Amy Graves
16 with Risk Management Team, Cheryl Ranson with the Risk
17 Management Team and Randy Suter from our Legal Services
18 Division.

19 I also have a few other staff either here
20 or were here today that I'd like to recognize. Winking at
21 me from behind the camera is Linda Cooper. I've got Bob
22 Rosier, Bureau of Employment Programs Public Information
23 Officer; Cindy Grinstead from the Workers' Compensation

1 Division; Connie Bowers, I think, from our Huntington
2 office. Did I see Connie here? Brenda Rithner from our
3 Charleston Office. Steve Malu from our Research Division.

4 Now, these folks here, I'm going to ask
5 each of them to stand as I introduce them, are some of the
6 members of the Compensation Programs Performance Council.

7 What you are experiencing today is part of
8 a series of eight public hearings around the state of West
9 Virginia. This is our third public hearing regarding a
10 very dynamic change in the underwriting and ratemaking and
11 safety and loss prevention activities of West Virginia's
12 Workers' Compensation insurance programs.

13 And I use the term insurance, and I want to
14 go back to that in just a moment, but the process that we
15 go through is to work with staff through one of the
16 committees of the Performance Council to develop
17 regulations, put them forward for public comment and then
18 take those public comments after a date certain for
19 consideration and analysis and then finally promulgate
20 them, and our goal as you've heard is to have this product
21 promulgated hopefully by November 1st.

22 Thad Epps, who is the Chairman of the
23 Finance Committee has had to leave. He's speaking to a

1 class over at Marshall this morning. Chris Jarrett, the
2 vice-chair of the counsel that provided opening remarks
3 represents the State Chamber of Commerce on the Council.

4 The Council is made up of four
5 representatives of the interest of employers, four
6 representatives of the interest of business and the
7 Commissioner of Employment Programs, myself, I'm sort of
8 serve as the man in the middle.

9 Fred Tucker, representing the interest of
10 coal miners, is the Chairman of our Claims Committee; Paul
11 Thompson, representing interest of steel workers and other
12 workers, I might add, and this is his hometown. Right,
13 Paul?

14 MR. THOMPSON: Yes, it is.

15 COMMISSIONER RICHARDSON: Glad to have everybody
16 right here in Barboursville. David Harris represents the
17 interest of small employers and he, too, is in the suburbs
18 of, I guess, of his hometown. Although these days with the
19 growth in Barboursville, some of the folks out here in
20 Paul's territory think Huntington's the suburb of
21 Barboursville. He's a very strident Marshall fan, I might
22 add. Everett Sullivan represents the interest of
23 construction workers on the Performance Council.

1 These folks have just made an outstanding
2 contribution to West Virginia's Workers' Compensation
3 system over the past several years. I think it's fair to
4 say that very few programs in the state of West Virginia,
5 state government have experienced as trouble in the past as
6 the West Virginia's Workers' Compensation Programs. It's
7 been the source of tremendous frustration for workers,
8 employers, public policy makers, health care providers and
9 over the past several years a number of initiatives have
10 been undertaken to correct these deficiencies to improve
11 West Virginia's Workers' Compensation system to ensure that
12 it is financially sound for the benefit of all workers and
13 employers in the state of West Virginia.

14 The absolute worst thing that could happen
15 would be for a financially unsound system to draw down its
16 assets, end up with no assets and have no Fund available
17 for injured workers and employers to pursue their insurance
18 through.

19 We've not always agreed on everything but
20 we have worked very closely together making improvements.
21 And this is one of the opportunities and, in fact,
22 requirements that was established under Senate Bill 250
23 that was enacted by the West Virginia Legislature in 1995.

1 That legislation as it pertains to
2 ratemaking and underwriting found that the existing system
3 was unacceptable. And that existing system, and you've
4 heard a good bit about it today, basically involved two
5 approaches. If you're an individual employer with
6 sufficient size, payroll, financial ability, safety and
7 loss prevention programs in place, then you could self-
8 insure your Workers' Compensation risk as an individual
9 employer. That was one way.

10 The second one was characterized in the
11 presentation as guaranteed costs, fairly traditional
12 insurance concept. You pay a premium. The first dollar
13 coverage is paid for out of the Fund.

14 Those were the two paradigms that all
15 employers were required to fit into, and that was it. The
16 problem is that the program has had little involvement from
17 the safety prospective. The program has had a fairly weak
18 field auditing initiative in terms of accurately
19 ascertaining payrolls and risk classification in some of
20 these other classes.

21 So collectively there are a number of
22 initiatives under way and that deal with the ratemaking and
23 underwriting area and risk management of this insurance

1 program. And this is the centerpiece of that upper. Let
2 me emphasize again that there are really four components of
3 field auditing. We have got to have an accurate reflection
4 of payroll, of risk, what the employees of an employer do
5 in order to ascertain the appropriate premiums to be paid
6 by the employers.

7 Secondly, safety and accident prevention
8 and loss management. Until 1993, there was absolutely no
9 mention in the West Virginia Workers' Compensation law of
10 safety.

11 These particular regulations place a
12 considerably more significant emphasis on safety and
13 accident prevention. These particular regulations in
14 combination with two other sets of regulations that are
15 under consideration by the Compensation Programs
16 Performance Council really express a collaborative and
17 involved process among employers, their workers and the
18 Workers' Compensation Program to reduce the number of
19 accidents that occur of West Virginia employers each year
20 and to thereby lower costs that employers experience.

21 The fact of the matter is that West
22 Virginia with a work force in the neighborhood of 650-,
23 700,000 employees and 38,000 or so employers that

1 experience about 70,000 accidents or Workers' Compensation
2 claims of one type or another a year. And to me that is
3 intolerably high.

4 We must reduce the number of accidents that
5 are occurring in the work place, and we can't just regulate
6 the employer and workers of West Virginia into that. It
7 has to be a collaborative effort and that's what this
8 proposal and the other two proposals seek to accomplish.

9 The third is the underwriting and
10 ratemaking. And again, you have two basic products. The
11 problem with that guaranteed cost product is that it really
12 just kind of commingled bad risks and good risks together,
13 so that if you were doing everything you could to minimize
14 your cost and another employer in your particular risk
15 category really had high costs and high number of accidents
16 they were kind of bringing you down and impacting your
17 rates, okay. And that's one of the reasons why we want to
18 establish an adverse risk pool or an assigned risk pool
19 within the Workers' Compensation Programs, to segregate the
20 bad risks, focus on safety and accident prevention
21 strategies with them to try to get them out of that
22 assigned risk pool and minimize their impact on other
23 employers. Okay.

1 Then beyond that the Program proposes to
2 provide two or three, depending on how you're counting,
3 other types of risk management insurance products within
4 the purview of the Workers' Compensation system. The
5 retrospective rating concept is essentially a settle-up-at-
6 the-end-of-the-year program. It is projected that you owed
7 us X and you actually owed a little bit more, then you pay
8 up; conversely, if you projected X and you ended up costing
9 a little bit less, you'd probably get a little bit of a
10 rebate. Okay.

11 And then the other is the deductible system
12 where basically you would bear a portion of the risk up
13 front. Now how's that going to affect the Workers' Comp
14 premium? Again, just common sense for a second. If I'm
15 paying -- if Paul Thompson and I have the exact same
16 automobile -- and I know that's not the case because I've
17 seen his automobile -- but if we have the exact same
18 automobile and I have \$100 deductible on my car and he has
19 a \$250 deductible on his car, then I'm paying a higher
20 insurance premium than he's paying because he's bearing
21 more of the risk up front if an accident occurs to that
22 automobile. I'm only bearing \$100, he's bearing \$250.

23 Let me offer a few words of caution. This

1 is a tremendous undertaking to the Workers' Compensation
2 Division. I think it would be fair to say from the
3 prospective of many employers and workers and health care
4 providers in the state that our track record's nothing to
5 write home about. We've struggled at times to meet the
6 goals that are laid forth for us under the law and
7 regulations.

8 I think it's also fair to say that
9 significant strides have occurred in the past few years on
10 meeting a number of those particular challenges.

11 This is no different than any other
12 challenge. This is going to require a significantly
13 different type of skill sets for our employees. It will
14 require some hiring of specialty capabilities that do not
15 presently exist within the Workers' Compensation Division.
16 And I offer that as a caution because if we're going to
17 look and feel and work a lot more like insurance programs,
18 work in feel in other states, we need to recognize up front
19 the type of challenge that we're facing when we're
20 undertaking an initiative like that. And I think all of us
21 are aware of that, and I think that all of the staff is
22 aware of that and I want to make sure that all of you are
23 aware of that.

1 The second item I want to caution you about
2 is that this is not just the way it's going to be. We came
3 today before you for two reasons. One was to give you kind
4 of a surface level, high level overview of the initiative.
5 And we recognize that this is going to take a good 18
6 months or more to really implement and get it where it's
7 going to be.

8 During that time period there will be more
9 and considerably more detailed efforts to reach out to you
10 and educate you on the responsibilities and options that
11 you will have in the context of this particular insurance
12 product. But the second reason that we're here today is to
13 get your input down. And we are now at that point in
14 today's session where you'll have the opportunity to make
15 verbal comment, public comment.

16 Again, Randy emphasized a few moments ago
17 that the Q & A part of the session, while it will be a part
18 of the transcript, it is not a part of the public hearing.

19 This is the public hearing, this is the
20 public comment and we have about 80 people here today.
21 It's a fabulous turnout, and in typical fashion just a few
22 people have indicated an interest to speak. And I want to
23 first up front apologize if I get my syllables mixed up and

1 mispronounce names. Maurice Alouf.

2 MR. ALOUF: Yes.

3 COMMISSIONER RICHARDSON: From Standard Foods in
4 Hurricane.

5 MR. ALOUF: Yes.

6 COMMISSIONER RICHARDSON: Come over here to the
7 podium, please. And I'll also caution you that when you
8 make public comment I always give the Performance Council
9 members an opportunity to ask some questions if they are so
10 inclined.

11 Secondly, before everyone leaves, let me
12 remind you that on the regulations there is the name and
13 address of Mr. Suter where you can forward written comments
14 by October 8th. So if you don't offer verbal comments
15 today, if you want to go back and talk to folks on your
16 staff or talk to an accountant, talk to an attorney, talk
17 to an insurance person, that opportunity is retained until
18 October 8th. So the address is right there on the
19 regulation, down in the lower right-hand corner.

20 MR. SUTER: There's also a survey form in your
21 packet that we would appreciate if you filled that out and
22 return it to us with regards to options.

23 COMMISSIONER RICHARDSON: Did you hear Mr. Suter?

1 Please complete the survey form in the back of your packet.

2 MR. ALOUF: As stated, I work with Standard Food
3 Services. We employ about 200 people. We're rather
4 concerned about the section under classifications that
5 employers will only be assigned one classification and that
6 will be the highest classification of workers that they
7 employ.

8 Our particular business applies -- employs
9 employees 50 percent of our people in the higher end of the
10 risk group, truck drivers and warehouse workers, but we
11 also have 50 percent of our employers in the lower end,
12 clerical workers and salesmen, and we're just concerned
13 that a single classification would be unnecessarily
14 burdensome and we would opt for a multiple classification.
15 Thank you.

16 COMMISSIONER RICHARDSON: Do members of the
17 Performance Council have questions?

18 (No response.)

19 COMMISSIONER RICHARDSON: All right. Thank you
20 very much. We appreciate that comment. There are two
21 individuals with Dutch Miller, and one of them is I guess
22 penmanship challenged. Matt Miller, I can read. The one
23 above Matt, I cannot read.

1 DUTCH MILLER REPRESENTATIVE: I think we were
2 signing up for attendance.

3 COMMISSIONER RICHARDSON: Okay. I saw a check
4 mark in the "Yes," column. So thank you very much for your
5 comment here. And I believe that that is the extent of
6 those names that have reflected on the sign-up sheet a
7 desire to testify today.

8 Let me ask, is there anyone else present
9 today who did not so signify that would now like to make
10 verbal comments? Evan Jenkins is here.

11 MR. JENKINS: Thank you, Commissioner.
12 It's more of a very brief statement, a welcome to the
13 Performance Council.

14 My name is Evan Jenkins, and I represent
15 the 16th Delegate District in the House of Delegates. I'm
16 proud that Barboursville is a part of the 16th District and
17 I appreciate everybody coming out to this public
18 information.

19 I also appreciate the Huntington Chambers'
20 willingness to spread the word and let folks now about this
21 important meeting, to Ken Busz and the other folks, thank
22 you very much.

23 I want to really make one or two brief

1 points. Number one, that back in 1993, the Performance
2 Council was created because the Legislature recognized that
3 we had a serious problem in Workers' Comp and that we
4 needed to take the solution process out of the political
5 process, out of the Legislative process.

6 So these folks here have devoted a
7 substantial amount of time and effort trying to solve the
8 problems of Workers' Compensation came about in '93 and
9 have worked very diligently.

10 In 1995, you've heard mention of the SB
11 250. That is the bill that asked this Performance Council
12 to create a risk management structure, to come up with a
13 new formula because the Legislature and the workers and the
14 employers around West Virginia recognized that we have the
15 second or first, depending on how you -- which year,
16 highest cost for covered worker in the country, that we had
17 no incentives for employers to provide a safer work place
18 because they did not see that those efforts reflected in
19 the premiums, and third the Fund was on the bankruptcy
20 within the next ten years. And that's bad for employers,
21 that's bad for injured workers, and that's bad for West
22 Virginia.

23 So I appreciate the hard work the

1 Performance Council has done to put forth these rules. I
2 want to make one thing very clear. These are rules that
3 the Performance Council has put out for public comment.
4 You've heard their November 1st target date.

5 The Legislature back in 1993 washed its
6 hand with the oversight of the rules that came out of the
7 Performance Council because they didn't want again the
8 political process come and tinkering with solution put
9 forth by the Performance Council. So these rules, when
10 they take effect, are promulgated and are implemented, if
11 that happens on November 1st, there is no real opportunity
12 to say, "Well, I'll just wait for the Legislature to come
13 in and fix what you may or may not like." But clearly the
14 Legislature is directing the Performance Council to come up
15 with a better way to set rates. The Performance Council,
16 we don't know whether or not they've hit a home run. We do
17 believe -- I believe they're on base. I like what I'm
18 hearing. There are certainly some very big concerns I
19 have. I agree about the issues that Maurice brought up
20 about the rate classifications. I'm concerned about the
21 audits. The details in the draft rules are very, very
22 strict. We all recognize the need for audits but some of
23 the language relating to the way in which the audits are

1 performed are pretty extensive, so I encourage each
2 employer to take a look at these, see what's good or bad
3 and respond in writing or future public hearings. Because
4 we're going to end the Workers' Comp as we know it,
5 hopefully, and make it a much more -- a system that
6 provides incentives that employers seek, that injured
7 workers can ensure that their benefits will be paid.

8 And so I appreciate your interests, and I
9 wanted to make those couple of points clear. And thank
10 you, Commissioner Richardson, for your hard efforts to
11 fixing the Workers' Comp and the efforts of the Performance
12 Council.

13 COMMISSIONER RICHARDSON: Do members of the
14 Council have any questions for Mr. Jenkins?

15 (No response.)

16 MR. JENKINS: This is your shot.

17 COMMISSIONER RICHARDSON: This is sort of like
18 parliament where it's question and answer time. Okay,
19 thank you very much. We appreciate those comments.

20 Are there other people running for public
21 office that would like to speak? Is there anyone else that
22 would like to provide public comment, that would like to
23 make a statement today regarding these particular proposed

1 regulations? Yes, sir. Come forward, give your name, your
2 affiliation and your comments.

3 MR. REVEAL: My name's Hershell Reveal with
4 SuperValu. I've read the proposal in detail. I feel that
5 it's on the right track finally but I do have some serious
6 concerns. The number one concern is this present year the
7 rates do not change. In that fact, my company lost
8 \$200,000.

9 This law is not projected to go into effect
10 until July 1998. Next year alone, as with the safety
11 initiative my company has put into effect and the hard work
12 that we have done, we're projecting again to lose another
13 \$200,000.

14 I feel that personally the law is going the
15 right way but while we're working to make those
16 initiatives, we need to take consideration for the
17 companies who are doing the right thing, because we are
18 being penalized, when the companies who are continuing to
19 have the bad rates are being rewarded. And I just wanted
20 to make that comment.

21 COMMISSIONER RICHARDSON: Do members of the
22 Council have any questions?

23 (No response.)

1 COMMISSIONER RICHARDSON: Thank you very much for
2 your comments. Yes, Ed Staats.

3 MR. STAATS: I have looked in detail at the
4 results of this company and it is a perfect example, and
5 Hershell Reveal is talking about the decision to make and
6 improve the rates and that decision is very, very -- under
7 the existing system of ratemaking and underwriting, the
8 credits that his company deserves, even had those rates not
9 been frozen, would not have reflected the results that they
10 achieved. That is the unfairness that's built into the
11 existing system. And that is one of the things we're
12 trying to solve with what we're doing now. It doesn't
13 answer your concern as to right now.

14 However, I do anticipate that as we go
15 through the implementation process -- I have to be careful
16 how I say this because I don't want to get mobbed -- we
17 will target specific companies to be involved in pilot
18 program. That is part of our implementation, and that's
19 all I can say about it.

20 COMMISSIONER RICHARDSON: Yes, sir. Name,
21 affiliation and your comment.

22 MR. GRAY: Thank you, Mr. Commissioner. Marvin
23 Gray, Executive Director of West Virginia Gasoline Dealers

1 and Automotive Repair Association. The comment made
2 previously about hoping someone would make a request to
3 change in the amount of the retro group. I would like to
4 officially make a request to the committee that that amount
5 be reduced to \$250,000, and primarily because the half
6 million may be fine for some states that have a larger
7 population and a larger pool to choose from and small
8 business.

9 In our specific field our numbers have
10 dropped in the last 18 years, and that's just difference in
11 number of locations. And when you're dealing with anywhere
12 from 3- to \$5,000 a year premium in Workers' Comp it takes
13 quite a few locations to come up with a half million in
14 premiums.

15 I feel that there are many other small
16 businesses in the state, category that could take advantage
17 of this program. I investigated in the state of Washington
18 which is relatively new into this type of situation, it's
19 working very well and is a great benefit to the small
20 businesses in that state particularly. And hope for that
21 reason, we urge you to reduce that figure from a half
22 million to a quarter of a million for retro group rates.
23 Thank you.

1 COMMISSIONER RICHARDSON: Thank you, Mr. Gray.

2 Questions for Mr. Gray?

3 (No response.)

4 COMMISSIONER RICHARDSON: Thank you very much for
5 those comments. That's exactly the kind of feedback that
6 we need to have in order to serve our customers
7 effectively. We need to know what will work best in the
8 context of balancing our dual responsibility. It's not
9 easy, but we as the Performance Council members have to
10 ensure that we have a financially sound program and yet at
11 the same time we have to make the ratemaking and
12 underwriting system set at the lowest possible level to
13 maintain that financially sound, and I believe that's a
14 specific provision with the law.

15 Other public comments to be offered today?
16 Yes, sir. State your name, affiliation and make your
17 comment.

18 MR. ROBINSON: Nelson Robinson. I
19 apologize for making my public comments earlier because I
20 was under the interpretation that's what we were doing. So
21 I was wrong, and I apologize for doing that at that
22 particular time. Also, my philosophical comments, I'll get
23 specific.

1 One of the things I'd like for the
2 Performance Council -- first of all, I commend you for what
3 you've done and the time and energy that you've put on this
4 Council because I know what you go through.

5 I would like for you to consider the
6 promulgation date of the rules to be implemented in the
7 Spring of 1997, for the fact being that most employers in
8 the state are used to or historically rates have been
9 changed in the Spring of 1997. This would also allow an
10 educational period by the Workers' Comp Fund to go out and
11 educate myself and others on specifically what you intend
12 to try to implement.

13 Also you can also set the effective date --
14 after you promulgate the rules in the Spring of 1997, you
15 can set the effective date July 1 of 1997, which employers
16 are again historically used to changes in the rate. And I
17 know that you mentioned that this will be anywhere between
18 November 1st and, I think, you said to July 1, 1998, but I
19 think that's the more -- for employers.

20 The group rating, I would like for you to
21 consider reducing the \$500,000 aggregate premium amount to
22 a similar amount in the area of -- you know, I can't tell
23 you here today because I'm not prepared, I'm not prepared

1 to -- I don't have any written comments or anything, but
2 look at the group rating and put a more realistic amount in
3 there for the employers in the state that are capable of
4 funding that, would have a better opportunity in a group
5 rate.

6 Also, under the deductible plan, I think
7 that if anybody -- I think you should determine a feasible
8 amount. My figure off the top of my head would be any
9 amount of \$200 or less that an employer in this state who
10 is wanting to go into the deductible plan, that you do not
11 get into the bureaucracy of paper work of securing bonds,
12 to go through such a small amount.

13 If an employer -- if you determine that a
14 employer is capable of going into a deductible plan of some
15 small amount, please do not put them through that type of
16 paper plan. Those are really the comments I have. Thank
17 you.

18 COMMISSIONER RICHARDSON: Questions for Mr.
19 Robinson?

20 MR. TUCKER: Mr. Robinson, do you think it's
21 realistic to do the implementation of the time limits
22 you're talking about based upon -- and to do the rule
23 justice? I want to get it done as fast as anybody. Why

1 implement a rule -- the Commission's expressed a concern
2 they don't have the people to do it with, and this is a
3 drastic change, and I realize that ratemaking and -- by
4 early spring, send a notice out by statute of effective in
5 July. I want it done as quick as possible also. If you
6 can relate to me the comments how you think that could be
7 done to be beneficial to the Commission, because I have a
8 concern, you know, to speed up the process we're going to
9 deteriorate any progress, is what I'm concerned about.

10 MR. ROBINSON: I concur with the remarks, I do
11 not think that the Workers' Comp Fund is capable of
12 handling the work load it's going to take to implement such
13 a rule. And also, I think, under the Civil Service system
14 with the problems you have in getting extra fees into the
15 Fund, more employees, it would take a minimum of six to six
16 months -- to get -- in place. And I caution you -- I
17 concur with your comments and I also caution that when the
18 flier went out, I think -- I'm for what you're trying to
19 do. Don't get me wrong. I'm not trying to be pessimistic
20 but I think that there's a fallacy out there that the
21 employers of this state believe that this is going to be a
22 quick fix and that once this rule is promulgated and it
23 doesn't reduce the premiums, we're going to have a real

1 problem on our hands. And the real problem is going to be,
2 when you take classifications and you either broaden the
3 classification system or you take in decreased premiums in
4 particular classifications, somebody else is going to
5 increase. And with the heavy industry we have in the state
6 of West Virginia, I'm very much concerned economically, if
7 we look at the state of West Virginia, that once you
8 decrease the classifications to put in whatever type of --
9 you're going to increase the others, and that's going to
10 affect the economy of the state of West Virginia. Thank
11 you.

12 COMMISSIONER RICHARDSON: Other questions for Mr.
13 Robinson?

14 (No response.)

15 COMMISSIONER RICHARDSON: I think it's important
16 for everyone to realize there are no quick fixes in this
17 system and the recruitment and the intention of the skilled
18 set necessary for tackling this effort is a significant
19 concern for all of us involved. And I really appreciate
20 Mr. Robinson's comments.

21 The concept that we are working with now, I
22 want to make sure everyone is clear on this, would be to
23 make the rule effective November 1st, but that doesn't mean

1 that November 1st everything changes. There may not be any
2 change until July of '97, until we can -- there may be some
3 sooner than that but in all likelihood it's going to take
4 us a few months to get the auditing under way, to get the
5 type of analysis there that can let us make some informed
6 decisions in order to move forward with the different type
7 of ratemaking and underwriting. We recognize that and the
8 question of realistically timing, the effective date.

9 The comment period, though, regardless of
10 when it's effective has to end October 8th because under
11 state law, we can only have a 60-day comment period for
12 regulations.

13 And I think that technically, if I recall
14 correctly, Randy, we would then have to act within six
15 months after --

16 MR. SUTER: That's not my impression. That
17 section, although applicable to many state agencies
18 promulgates a final rule within six months at the close of
19 public comment is not applicable.

20 COMMISSIONER RICHARDSON: All right. Other
21 questions or comments this morning from the public? Yes,
22 sir, please step forward. Name, rank and serial number.

23 MR. HIGGINBOTHAM: My name is Rick Higginbotham.

1 I'm with the George Friedlander Company in Charleston.
2 We're an insurance and surety agency specializing in the
3 handling of construction contracts. My comments to the
4 Performance Council may well be addressed. I've certainly
5 not read the proposed rule in detail but would stem from
6 being payroll being the sole basis of premium determination
7 within the construction industry. Certainly you have union
8 versus non-union firms and typically the union firms will
9 be paying higher wages.

10 So it really stems from the standpoint of,
11 perhaps, man hours versus payroll, and while that becomes
12 an administrative nightmare to monitor and promulgate rates
13 from, then there should at least be some consideration
14 given to contractors -- classification adjustment program
15 where it will be more equalization for that. Thank you.

16 COMMISSIONER RICHARDSON: Questions for Mr.
17 Higginbotham?

18 (No response.)

19 COMMISSIONER RICHARDSON: Thank you very much,
20 sir. We appreciate those comments. Are there other public
21 comments today? Come forward and please provide your name
22 and affiliation. Thank you.

23 MR. MORRIS: My name is Ray Morris. My wife and

1 I operate a mom-and-pop type business and, of course, we
2 think we pay astronomical Workers' Comp rates, and there's
3 just a few things that I'm concerned about sitting there
4 listening to the different comments.

5 Number one, under our group program, and I
6 believe that everybody's heading in the right direction.
7 Time will tell. Are we making an effort -- are the rules
8 in here, are we making an effort to collect past-due money?

9 COMMISSIONER RICHARDSON: Yes, sir.

10 MR. MORRIS: That is one thing that I'm concerned
11 about. As you all know, after the first of the year we
12 have a new administration. Uh, is this subject to
13 political tampering, this new program? Uh, the -- and
14 again, getting back to collecting this past-due thing, how
15 enforced are these new rules going to be? I mean, are we
16 honestly going to enforce our group program or is it going
17 to be like in the past where we kind of -- where the guy
18 that doesn't pay his bill, I'll worry about it next month.

19 In talking about the premium, somebody
20 asked for a reduction from a half million to a quarter of a
21 million. I, too, want to put my okay on that.

22 One of the ways of answering that might be
23 to reclassify or as you are classifying your different

1 groups -- in other words, I am a part of what they call a
2 green industry. In other words, I'm in the lawn care
3 business. I think I speak for landscapers. I know they
4 crab to me about the rates. Also irrigation work. As
5 opposed to some type of heavy contracting where a half
6 million might be more less of a problem as it would be with
7 a smaller group of business people. That's all I have.

8 COMMISSIONER RICHARDSON: Questions for Mr.
9 Morris?

10 MR. HARRIS: I would like to personally assure
11 Mr. Morris and everyone else in the room that significant
12 efforts have been made with respect to collection of past-
13 due premiums and I'm happy to report that we've had some
14 very targeted results.

15 COMMISSIONER RICHARDSON: Thank you. Other
16 questions from the Council members? Thank you very much,
17 Mr. Morris.

18 I'd like to echo what Mr. Harris said. The
19 initiatives are -- and firm that we have undertaken to
20 collect premiums owed to Workers' Compensation. I think
21 it's fair to say that last year our premium or the
22 collection level was the highest in the program's history
23 and, in fact, exceeded projections by about \$40 Million if

1 I recall correctly.

2 We have a number of additional and new
3 initiatives under way that will positively influence that.
4 And when I was cataloguing earlier the four elements of the
5 program, I apologize, I left out collection and accounts
6 receivable management. I went through field auditing, I
7 went through safety and loss prevention. I went through
8 underwriting and ratemaking and then I got sidetracked, and
9 I apologize for that. Collection and accounts receivable
10 management is a vital and fundamental part of this. And
11 there's not only the follow-up type of collection in
12 receivables management but you'll recall in the handout
13 reference to the opportunity, for example, to pay annually,
14 instead of paying quarterly, that will reduce paper work
15 for small companies, but will also help us manage the
16 accounts receivable better, or pay weekly if you're a bad
17 risk or bi-weekly. So there's a number of different ways
18 that the system promises to change. And yes, it will be
19 more complex but number one, it will help keep us from
20 getting the accounts receivable problems down the road that
21 we've experienced over the past several years. And number
22 two, it will frankly, for the employers that truly want to
23 play by the rules and pay their bills but can't pay, you

1 know -- I had one guy tell me, you know, "I want to go
2 ahead and pay in advance because if I put it aside I might
3 spend it." And I think many small business that type of
4 thing happens. It's not something conscious but, you know,
5 an emergency comes up, the truck needs \$3,000 worth of
6 repair and instead of using the monies for what you set it
7 aside for you use it for the truck repair, and that way you
8 don't have to go bother your bank. That doesn't make it
9 right but it sure makes it understandable how it happens.
10 So I appreciate your comments. Are there other comments
11 from the public today?

12 (No response.)

13 COMMISSIONER RICHARDSON: If not, I want to close
14 by offering each of the Performance Council members an
15 opportunity to say anything.

16 MR. SULLIVAN: I would just like to say,
17 Commissioner, that the person who is representing the
18 insurance companies concerning the hours worked versus the
19 payroll, we certainly in our industry support this concept,
20 tried to get some kind of legislation enacted but were
21 unsuccessful, but we're going to continue to work on that.

22 SPEAKER: Pardon me, I could not hear his
23 remarks.

1 COMMISSIONER RICHARDSON: Mr. Sullivan who
2 represents the interests of building and construction trade
3 workers echoed his support of Mr. Higginbotham's view that
4 hours worked should be an appropriate consideration as well
5 as payroll in the construction industry. Is that a fair
6 statement?

7 MR. SULLIVAN: Yes.

8 COMMISSIONER RICHARDSON: Thank you, Everett. Is
9 there anything else for the good of the order?

10 MR. SUTER: Commissioner, I'd appreciate if the
11 folks could fill out the surveys. We really do want to
12 know what they think.

13 COMMISSIONER RICHARDSON: Thank you all very,
14 very much for being here. October 8th is the deadline for
15 written comments.

16 (Whereupon, the public hearing
17 was concluded at 11:15 a.m.)

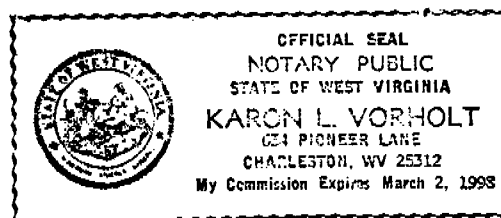
REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to wit:

I, Karon L. Vorholt, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the testimony adduced or proceedings had in the aforementioned case as set forth in the caption hereof.

Given under my hand this 20th day of
September, 1996.


Karon L. Vorholt
Certified Court Reporter



BEFORE THE WEST VIRGINIA WORKERS' COMPENSATION
PERFORMANCE COUNCIL

BEP-LEGAL DIVISION

96 OCT 17 PM 1:33

IN RE: RISK MANAGEMENT RULE

TRANSCRIPT OF PROCEEDINGS

The following is a transcript of proceedings had in the above-entitled topic before the West Virginia Workers' Compensation Performance Council, held at the Econo Lodge, Elkins, Randolph County, West Virginia, on the 26th day of September, 1996, at 11:10 a.m.

ANN KREPS SHOCKEY
CERTIFIED COURT REPORTER
Post Office Box 923
Elkins, WV 26241
Phone: 636-9263

APPEARANCES: ANDREW N. RICHARDSON, Commissioner
ED STAATS
CHRIS DEANGELIS
AMY GRAVES
CHERYL RANSON
RANDALL SUTER
PAUL THOMPSON
EVERETT SULLIVAN
FRED TUCKER
CHRIS JARRETT
THAD EPPS

Reporter's Certificate.....71

1 MR. RICHARDSON: Good morning. I'm overwhelmed by
2 the turnout here in Elkins today. I want to express my
3 appreciation for everyone coming out today to hear a
4 little bit about what's going on in the West Virginia
5 Workers' Compensation System and hear about the changes
6 that are moving forward to take a different approach to
7 the way the rates and collections and accident prevention
8 are handled for the West Virginia Workers' Compensation
9 Program.

10 My name is Andy Richardson. I'm the
11 Commissioner of the West Virginia Bureau of Employment
12 Programs, and in that capacity, I have the responsibility
13 for the oversight of Workers' Compensation.

14 It's great to be here in Elkins. I'm here
15 frequently with the local office. Job Service and
16 Unemployment Comp is located here in town.

17 What we plan to do today -- This is the
18 sixth of eight public hearings that have been conducted
19 throughout the State of West Virginia over the past few
20 weeks and continuing into next week.

21 This particular presentation today will
22 focus on a number of different issues. Now, there's been

1 a lot of discussion over the past few years about West
2 Virginia's Workers' Compensation System, the changes that
3 have been made, and the efforts to bring some measure of
4 financial stability to that program. Much of that
5 discussion is centered around Senate Bill 250 that was
6 enacted in 1995 into the West Virginia Legislature.

7 What you will hear about today is a part of
8 that legislation that hasn't been talked about a great
9 deal, and it has to do with ratemaking and underwriting.
10 In short, it has to do with how West Virginia Workers'
11 Compensation Program is striving to look and feel more
12 like an insurance system.

13 There's basically four components to that.
14 One has to do with field auditing. Field auditing is the
15 activity of going out and verifying payroll, verifying the
16 classification an employer is in, and making sure that
17 that payroll and classification is accurately reflected in
18 the rate that the employer pays to the Workers'
19 Compensation Insurance Fund.

20 Secondly, safety and accident prevention.
21 Now, we have some regulations that are out right now for
22 comment and dialogue on -- I guess actually, the comment

1 period has ended with those, but they're continuing to be
2 worked on by the folks within our system that focus solely
3 on safety and accident prevention. It sets up a series of
4 programs to encourage accident prevention, to encourage
5 safety.

6 You know, West Virginia currently receives
7 about 70,000 Workers' Compensations claims every year. I
8 guess it's actually about 67,000 -- 67,000, 68,000. And
9 that's on a work force of just above 700,000 people.

10 You know, folks, I don't know how you feel
11 about that, but I feel that's entirely too many claims.
12 That's entirely too many folks, for whatever reason,
13 ending up filing a Workers' Compensation claim. About
14 20,000 of those are for what's called lost time injuries.
15 But we need to reduce that. We need to do a better job of
16 preventing accidents and encouraging safety in the
17 workplace.

18 The third area, and I'm going to talk about
19 this one in just a moment, has to do with underwriting and
20 ratemaking.

21 Then the fourth area will have to do with
22 collections and accounts receivables management and some

1 of the efforts that are underway to keep employers from
2 getting behind and to detect them more quickly, to take
3 action more quickly to keep folks from ending up owing a
4 whole lot of money all the sudden, and just do a basic
5 fundamental better job of accounts receivables management.

6 The centerpiece of what we're here to talk
7 about is underwriting and ratemaking, and Senate Bill 250
8 rewrote the provisions of the State Code regarding the
9 establishment of rates for West Virginia's Workers'
10 Compensation System, and it charged the Compensation
11 Program's Performance Council with putting forth
12 regulations that would create a new design of the rates
13 for employers.

14 Now, that Compensation Program's Performance
15 Council, in conjunction with our staff, have developed
16 ideas, and that is what we are here to talk about today.

17 The Compensation Program's Performance
18 Council was created in 1993, and is the governing body of
19 the Workers' Compensation Program in West Virginia. It is
20 made up of four representatives of the employer community,
21 four representatives of the worker community, and the
22 Commissioner of Employment Programs kind of sits in the

1 middle, if you will.

2 I'm going to introduce some of those folks
3 right now. Right here sitting on your left and
4 arguatively appropriately so are three representatives of
5 workers, and sitting on your right and arguatively
6 appropriately so are two representatives of employees, and
7 I'm going to sit in the middle the best I can. Maybe I
8 ought to sit in the back.

9 We have representing and nominated from the
10 Steel Workers of West Virginia, Paul Thompson. I'll stand
11 over here where you can see these people better. Paul
12 Thompson. Representing construction workers is Everett
13 Sullivan. Representing coal miners is Fred Tucker.
14 Representing the West Virginia Chamber of Commerce is
15 Chris Jarrett, and representing manufacturers is Thad
16 Epps.

17 Now, the regulations that you have before
18 you -- Did everybody get a copy? It's the -- These are
19 the regulations (indicating). This is the Reader's Digest
20 version (indicating), okay? These are the cliff notes.

21 What we have are proposed changes to West
22 Virginia's regulations regarding Workers' Compensation

1 rates, as well as touching on these other things, too,
2 regarding collections and accounts receivables management
3 and matters of that sort.

4 Now, over the next several minutes, you'll
5 hear a presentation, and where we're headed with these
6 proposals is as follows: currently, there are two ways to
7 handle your Workers' Compensation risk in West Virginia.

8 One is what's called Guaranteed Costs for a
9 regular subscriber. You pay a premium to the Workers'
10 Compensation Fund, and we pay first dollar coverage to you
11 for your Workers' Compensation injuries, right? The
12 employer pays the premium. Somebody gets hurt. We pay
13 first dollar coverage.

14 The second is called Individual Self
15 Insurance, and if an employer is large enough, has enough
16 employees, has enough payroll, has a significant enough
17 safety program, has a solid financial statement, then they
18 may be self-insured and pay their own claims, if you will.

19 Today, depending on how you count, there are
20 either three or four other types of insurance policy
21 options that we will be talking about. One is an Assigned
22 Risk Program or an Adverse Risk Program. Well, we've all

And basically what Retro Rating Plans are in the insurance business is, we would take -- we would sit down and figure out a projection on what your costs are going to be for the year, and that would drive your premium, and if you actually had lower costs than projected, you'd get a rebate, and if you had higher costs than projected, you'd owe the program money. You'd just settle up at the end of the year, so to speak. That's a

1 real simple way of characterizing it.

2 The last area would be deductibles, and
3 again, I think we can all relate to deductibles. If Mr.
4 Jarrett and I both drive the exact same kind of car, which
5 we don't - he drives a far nicer car than I do - but if we
6 did and had the same level of claims experience and all
7 that, but I had a \$500 deductible and he had a \$100
8 deductible, then I'd be paying less premium into the
9 insurance program than he would, right? Same thing with
10 deductibles in the context of a Workers' Compensation
11 Program.

12 So, that is where we're at, and what you'll
13 hear about today is a re-capsule of these particular
14 proposals.

15 I want you to look at this particular
16 handout for just a minute on the regulations (indicating).
17 You'll see on the front page down here at the bottom, it
18 says the last day for written comments is October 8, 1996,
19 at 5:00 p.m. That means exactly what it says, that on
20 October 8th, which is a week from next Tuesday, the
21 comment period on these proposed regulations will end.

22 Where do you send your comments? You send

1 your comments to Randall B. Suter, Council, Legal Services
2 Division, Post Office Box 3922, Charleston, 25339-3922.

3 Today, you may also offer comments. Today's
4 program will be two parts. One will be a presentation by
5 our staff to walk through what has been proposed and ask
6 you to offer comments and questions of a general sense.
7 Secondly will be an opportunity to provide public comment
8 today regarding the proposals.

9 After all this comment is collected on
10 October 8th, then the Finance Committee of the Performance
11 Council, which is chaired by Mr. Epps, will gather
12 together those comments, along with staff, work through
13 them, rework the proposals, and then move forward on
14 promulgating these regulations formally.

15 Now, that doesn't mean that on some date, a
16 magic wand is going to be waved and everything's going to
17 changed in the way rates are done. Quite frankly, we are
18 concerned about the capacity of our organization to
19 implement this. We're concerned about attracting the kind
20 of skills and the staffing that will be needed to make
21 this work right for West Virginia, and we intend to phase
22 this in over probably an 18-month period or so.

1 What I'd like to do now is to introduce the
2 people who are going to be speaking with you over the next
3 few minutes. First is Ed Staats, who is the Chief
4 Financial Officer for West Virginia's Workers'
5 Compensation Division, and Ed has pretty much overseen the
6 Risk Management Team that has worked on this initiative.
7 Chris DeAngelis is also a part of the Risk Management
8 Team. Amy Graves, she's in the back. Wave to everybody,
9 Amy. We got to give Amy a lot of grief last week, and I
10 guess I can do it again today, because she's a graduate of
11 Purdue. It's a lot easier to give her grief today than it
12 was last week. We just weren't sure about 9:30 Saturday
13 night who would be giving the grief today. Amy, too, is a
14 member of the Risk Management Team. Cheryl Ranson, also a
15 member of the Risk Management Team, and Randall Suter.
16 Yes, the same Randall Suter whose name appears on here.
17 He's a part of our Legal Services Division. He is our
18 attorney that has worked on the development of these
19 regulations.

20 So, welcome, and we're glad you're here. We
21 look forward to sharing the story with you on how we hope
22 to change the ratemaking and underwriting system and make

1 it more sensitive to safety and a better product for all
2 of our customers, both the injured workers and employers
3 alike.

4 Thank you all very much for being here
5 today. Ed.

6 MR. STAATS: Can you all hear me without a
7 mike? You're going to find as we go through the rule that
8 the underlying approach is to provide an opportunity for
9 employers and employees to control their Workers'
10 Compensation costs by prevention of the fundamental
11 drivers; accidents.

12 If you were to look at this floor where I am
13 about to walk, you're going to see a way that if I make a
14 mis-step, I have a compensable injury, and it is simply
15 carelessness. It's this cord right here (indicating) that
16 if I trip on it, my employer's rates are going to go sky
17 high under this scenario.

18 When we first mailed out to you all this
19 little brochure (indicating), what this really is is a
20 financing plan for the future for Workers' Comp, and we
21 mailed about 40,000 of these, and when we mailed them, we
22 began to get telephone calls. Let me tell you what some

1 of those calls said.

2 A little cabinet company, they were very
3 excited. Their premiums have been going up. They've
4 worked hard to control their losses. They wanted to see
5 multiple classes. They were concerned that someone would
6 keep this rule from going through, because they felt that
7 this one was for the little guy.

8 A moving company in Weirton, the people in
9 their office cheered when they passed around the brochure.
10 They were very complimentary about the proposed changes,
11 had already seen positive changes as the result of our
12 changes in how we manage claims. They were very excited
13 about retros. Their company had instituted Risk
14 Management programs. But the loss reduction that they had
15 achieved had not been reflected in their experience
16 modification factors. They suggested that we not require
17 a deposit for companies with good Fund history and a good
18 credit rating; perhaps a very good suggestion.

19 The Bavarian Inn in Shepherdstown, they
20 wanted to have a retro and wanted to know how they could
21 sign up. They were excited that somebody is looking out
22 for the employer who doesn't have claims.

1 Based on these comments and others, we think
2 we're going in the right direction.

3 Exhibits 2 and 3 of your presentation
4 handout reflect the objectives we are trying to achieve,
5 but the objective that most reflects the underlying
6 strategy of our effort is the one that says create a
7 framework. That's what this rule is.

8 The strategy is, in fact, the basic
9 fundamental recognition that employers and their employees
10 can cure the financial ills of Workers' Compensation if
11 the System provides methods for those groups to directly
12 influence Workers' Compensation rates.

13 This financing plan fixes the responsibility
14 for rates with the employer and the employee and provides
15 rewards if prevention of workplace injuries occurs and is
16 reflected in the number of those injuries with such a
17 strategy to be successful.

18 How many of you all can tell me how your
19 rates are calculated right now? Well, these folks here
20 are CPA's, third-party administrators. They should know.
21 Who else was back there? What's your background?

22 AUDIENCE: Accountant.

1 MR. STAATS: I'm sorry?

2 AUDIENCE: Accountant.

3 MR. STAATS: Three people? Four?

4 AUDIENCE: Mining.

5 MR. STAATS: Mining. Do you know how your
6 rates are calculated? Do you know how --

7 AUDIENCE: Unjustifiably so, I think I do.

8 MR. STAATS: Well, I've got four people then
9 in this room.

10 In order for this strategy to work, though,
11 it requires that the Fund provide you all with full and
12 complete disclosures of all the policies, the methods, the
13 procedures, and the cost drivers that impact your rates.
14 You need to know how your rates are done, what drives
15 them, how you can impact those drivers.

16 No more hocus pocus in ratemaking in West
17 Virginia Workers' Compensation System, no more black
18 boxes. You've got to know this information in order to
19 help us achieve the objectives that we've established.
20 It's our intention to provide you with this information as
21 we move forward and implement this program. There will be
22 substantial education efforts coming in the future,

1 significant efforts as we implement.

2 During this presentation, my Risk Management
3 Team is only going to hit the concepts. That rule is 61
4 pages long or 64, and it is a framework. It doesn't talk
5 about the details of how you qualify for a particular
6 plan. It doesn't talk about the details of what will
7 cause your plans to be approved or reviewed. It doesn't
8 talk about those details. It is a massive change to this
9 system.

10 AUDIENCE: How long is this going to take?

11 MR. STAATS: What?

12 AUDIENCE: All of this system. I just come
13 in, and I excuse myself for that. Is this law yet that
14 it's going to happen, this Risk Management thing?

15 MR. STAATS: Not yet.

16 AUDIENCE: When is that going to happen?

17 MR. STAATS: When the Performance Council
18 promulgates the rule, it will happen. Then we'll
19 implement it. As the Commissioner indicated, it will take
20 us, we think, at least 18 months to implement it.

21 On page 64, I believe it is, or maybe 61,
22 Section 19.1 and 2 of the rule, you'll find a couple

1 paragraphs that talk about how we're going to implement it
2 and the time frame.

3 Let me introduce in a little bit more detail
4 the people who are involved in designing this program for
5 you. Cheryl Ranson is a Certified Public Accountant. She
6 has a degree in mathematics, psychics, and science from
7 WVU and a degree in accounting from the University of
8 Charleston. She has six years of private sector
9 accounting and management experience, along with eight
10 years as an instructor in mathematics and psychics.

11 Amy Graves is a graduate of Purdue with an
12 M.S. in management and a graduate of the University of
13 Michigan with a B.A. in economics. She has five years
14 experience in the life, health, and property and casualty
15 industry with CNA and Met Life, as well as three years as
16 an account analyst with Travelers Insurance in
17 underwriting pricing and marketing Workers' Compensation
18 coverages.

19 Randy Suter, from our Legal Services
20 Division, is a 1978 graduate of the West Virginia College
21 of Law. He has experience in private practice, as well as
22 16 years experience with various state agencies.

1 Finally, Chris DeAngelis. Chris has a B.A.
2 in finance and actuarial science from the University of
3 Illinois. He has seven years experience in property and
4 casualty insurance, including pricing and reserving
5 Workers' Compensation coverage. He's worked with such
6 companies as Kemper, Allstate, and Saint Paul, and he's
7 going to discuss ratemaking.

8 MR. DEANGELIS: Thank you. I'm going to try and
9 talk from in front of the slide machine here. So, can
10 everybody hear me in the back?

11 As mentioned, there's many facets to what
12 we're trying to do here. But in talking about ratemaking,
13 what we're really referring to is the formulas, the
14 calculations, all the methods involved with not only
15 calculating each classification base rate, but each
16 individual employer's prospective premium and rate.

17 And the rule that we've gathered here today
18 is really what has allowed us to design the new system
19 that I'm going to talk about. As Ed mentioned, we're
20 really going to keep it at a high level, because some of
21 the concepts are pretty technical and they're pretty
22 lengthy, and in the future, as we go forward with

1 implementation, we do plan on scheduling the same kinds of
2 sessions for more educational and more detailed on what
3 exactly the formulas and the methodologies that underlie
4 some of the things that I'm going to talk about today.

5 What I am going to talk about is four major
6 objectives that we approached the project with to try and
7 change. The first one is the industries that are creating
8 the costs are going to pay for the costs. The second one,
9 after the classification base rates are established, the
10 individual employers within each industry that are
11 creating the majority of the costs for that industry are
12 going to pay for the costs in that industry. The third
13 thing, we wanted to come up with a model that better
14 communicates to you, the employer, what are the cost
15 drivers that are really creating your premiums, what are
16 the underlying issues that result in premium changes, so
17 that you better understand what it is that's causing the
18 rates and you can understand how to reduce those rates on
19 your own behalf. Finally, we wanted to create a model
20 that was more flexible to adapt to changes in the West
21 Virginia Workers' Comp environment, as well as support new
22 products, which will be talked about here after I'm

1 finished.

2 As I stated, the rule is what has given us
3 the ability to design the new methodology, but it's really
4 an initiative that took place -- started taking place
5 several years ago that has set the foundation for us to be
6 able to design this new methodology, and it's really two
7 systems that have been implemented at the Division that
8 allow us to capture a lot more information, enabling us to
9 come up with more comprehensive formulas.

10 Those systems are the MIRA System, which is
11 a world-class reserving system identifying -- I think it's
12 like a hundred and ninety some odd variables that really
13 pick up a lot more information and allow us to get more
14 detailed analysis.

15 The second one is the WCIS System, and that
16 serves more as a kind of data warehouse, where it stores
17 the information and allows us to collect in the format
18 that we want, so that we can perform the analyses,
19 and because of this foundation, we have been able to go
20 forward with the design and eventually go forward with the
21 implementation.

22 But as I said, the first objective is really

1 to allow us to make the industries that are creating the
2 costs pay for the costs.

3 So, if I'm a widget maker, and all the
4 widget makers have attributed a certain amount of costs to
5 the Division, all the widget makers are going to have
6 Workers' Comp premiums that are reflective of the costs
7 that they're incurring.

8 And how can we do that? It's because of
9 this new, more comprehensive data system that really
10 allows us to have formulas that more closely reflect what
11 is going on within each individual industry, allows us to
12 do some analysis that will help us to understand some of
13 the trends that are going on with different industries and
14 appropriately allocate the costs of those industries based
15 on their own experience.

16 The other issue is that because of this more
17 comprehensive data availability, we're going to be able to
18 have more formulas and more analyses which allow us to
19 kind of serve as a check and balance. In the past,
20 there's been some limitation into how much analysis can be
21 done. So, if we're coming up with things that may not be
22 entirely reasonable, there's not a lot of checks and

1 balances.

2 But going forward, because of this more
3 comprehensive data availability, we're going to be able to
4 validate some of the responses, some of the projections,
5 and make sure that we're kind of heading in the right
6 direction and we're coming up with the right information
7 and the right answers and eventually, the right rates.

8 Two other components that are going to
9 contribute to helping the industries more closely pay for
10 their costs is that we're going to be having some things
11 called field audits, and they're going to be talked about
12 later in this presentation. But essentially what it boils
13 down to is that if you have people who are in the wrong
14 classification, their experience is not going to be
15 utilized and analyzed correctly, and it's going to affect
16 both the class that they're supposed to be in and the
17 class that they are in that they're not supposed to be in.
18 It's going to affect it adversely in projecting those
19 rates.

20 So, it's very important that we figure out
21 people are in the right classifications, as well as
22 finding out the correct payrolls are being reported.

1 The second one is special projects. They
2 kind of allow us to do these analyses in the off season,
3 so to speak, when the rates aren't being developed, so
4 that we kind of get more into what is going on in
5 manufacturing, what is happening in construction, and kind
6 of let us understand the data better and do some more
7 thorough analysis to really understand what's happening
8 out there in West Virginia Workers' Comp.

9 The second objective is that once we
10 establish the classification rates, we also want to be
11 able to have a system that really focuses on how well is
12 an employer doing relative to where it should be in that
13 industry. It's formulas that allow us to better reflect
14 and respond to the claims experience of each individual
15 employer.

16 So, if you are somebody that has very
17 positive experience, you're doing a good job of managing
18 claims, you're not getting claims, your rates are going to
19 go down. Whereas, the employer who's doing the same kinds
20 of whatever industry you're in and they're having worse
21 experience, they're going to pay for more of the Workers'
22 Comp costs in your industry.

1 And the way that some of this is happening
2 is that if you think about it, this is an example of just
3 the actual claim costs. The model focuses on looking at
4 what actually has come in from claims experience over the
5 last couple of years versus what we would expect to see
6 from the formulas and the models within the actuarial
7 methods.

8 And based on that, you're either going to be
9 having experience that is below what you're expected,
10 equal to what you're expected, or higher than what you're
11 expected, and based on that, the rate that you pay for
12 those losses is going to be adjusted. If it's less,
13 obviously, your rate will go down. If it's more, your
14 rate goes up.

15 And so, because of that, I think we're
16 putting together a system that will help the employers
17 understand what is driving their costs and why they go up
18 and why they go down, because you'll actually be able to
19 see that. And how can we do that? It's again because of
20 the fact that we have the ability to generate this more
21 detailed and comprehensive data to come up with formulas
22 that can better reflect and respond to each individual

1 employer's claims experiences.

2 The third objective is kind of keeping in
3 line with the reason why we're here today, and that is
4 because we want to communicate to you what's happening,
5 and from a ratemaking prospective, we want to communicate
6 to you where are the costs coming from, how is it that the
7 rate ended up at this point, and what kind of things do
8 you have control over.

9 There are some things that you don't have
10 control over, and we want to share those with you as well.
11 We want to breakout your costs in a piece of pie, so that
12 you can see, okay, I'm paying this much because I have
13 this particular claims experience, and that's where I have
14 control.

15 Then there's also some administrative
16 expenses. In order to administer the program, the
17 Division acquires some costs that have to be passed along,
18 and they're a percentage of your losses, and that's this
19 piece of pie (indicating), and maybe what it will look
20 like hopefully is something that in this example again,
21 that okay, based on a regular average employer, my costs
22 just for the losses should be \$10,000, but because I had

In the past, as mentioned, I think people have kind of felt like it's been hocus pocus, and we're really going to change that, because as introduced earlier, the folks sitting behind me are the Performance Council members. It's a diversified group of individuals who represent not only employers, but also employees, and

1 these are the folks that are going to be making a lot of
2 the determinations as shown in the rule that impact a lot
3 of the methodology and a lot of the strategy behind the
4 ratemaking philosophy.

5 And because of the fact that these folks are
6 making those decisions and they represent you, we feel
7 that things will be more out in the open as to what is
8 driving the methods, what is driving the costs, and
9 essentially having some input into how it's being
10 developed, so that you understand and you can see, and we
11 feel that by communicating that and helping you to see
12 that, we feel like we'll be doing a much more effective
13 job as a Workers' Comp Insurance Program.

14 The other issue is that we needed the
15 flexibility in the model, so that we can support new
16 products that may be better suited to you as an individual
17 employer or better in line with the strategy of your group
18 or the industry that you're in, and it may be more suited
19 to provide a better product to you as an employer.

20 So, with that, I'm going to have Amy -- Amy
21 is going to come up, and she's going to talk about some of
22 these alternative rating plans, so you get a better

1 understanding of what they entail.

2 MS. GRAVES: I'm going to use the microphone.
3 I think it carries it a little bit. This room is quite
4 full, and we're really astounded by the turnout and glad
5 that everyone came out.

6 As Chris mentioned, the rating methodology
7 really allows us to provide more flexibility and allows us
8 to offer some various alternative rating plans, and that's
9 what I'm here to talk about here today.

10 And just so you know, all of the alternative
11 rating plans are referenced in the rule handout that each
12 of you have in Sections 9 through 13.

13 Basically, what will continue to be the
14 standard plans will be both Guaranteed Cost and Self-
15 Insurance, and these alternative plans will be additions
16 to those.

17 Before I go into discussing some of the
18 details, I want to answer three main questions, which I'm
19 hoping each of you probably have. One is what are these
20 plans? Which one is best for me? The second is okay,
21 maybe I know what these plans are. How do I qualify or
22 how am I eligible for coverage under these plans? And

1 then finally, once I have coverage under one of these
2 plans, how will I know if I can continue to be eligible
3 for coverage? How will my experience be reviewed and
4 monitored by the Division?

5 So, with that, the first plan I want to talk
6 to you about is the Deductible Plan. Basically, this plan
7 is really not much different than any other deductible
8 plan you might have for your personal automobile, your
9 dental insurance, your health insurance. The only
10 difference here, obviously, is that it's Workers'
11 Compensation and the deductibles will typically be a
12 little bit higher than \$50, \$150, or \$200.

13 There will be a range of deductibles that
14 will be offered, and in return, your premium would be
15 reduced depending on the size of the deductible. So, the
16 higher the deductible, the greater the premium reduction.

17 Basically, it allows employers, particularly
18 smaller employers, with the opportunity to self-insure a
19 portion of their insurance risk for an impact on their
20 premiums. It also allows the Division a mechanism to
21 perhaps choose a employer to be placed in this plan if,
22 for example, they continuously have a frequency of losses

1 that fall within a certain deductible range. It would be
2 perhaps more easily administered if that employer would be
3 in a Deductible Plan.

4 The second plan is an Individual
5 Retrospective Rating Plan. Basically, employers would be
6 eligible for this plan if they were in a certain premium
7 range and if they had a degree of experience that was in
8 line with an Individual Retro Plan. In exchange for a
9 claim in a standard guaranteed cost premium, if your
10 experience throughout a specific coverage period either
11 falls below what is expected in terms of your loss cost,
12 you would have your premium returned, depending on the
13 amount that you were below what was expected. If,
14 however, at the end of the coverage period, your losses
15 were greater than expected, you then might be assessed an
16 additional premium at the end of the coverage period.

17 This plan allows employers that continuously
18 make improvements in their safety, in their losses to have
19 a premium impact over a shorter period of time than
20 perhaps the standard experience modification factor might
21 have.

22 The Group Retrospective Rating Plan is

1 really no different. The only difference is that it is
2 offered to groups of employers rather than individual
3 employers. And it can't just be any group. It has to be
4 a group that falls within similar classifications or
5 similar industry groups.

6 What this allows employers to do,
7 particularly smaller employers, is group together and
8 therefore have a greater impact on their premiums and the
9 way that their individual premiums are calculated.
10 However, one caveat is that this group must be represented
11 by a sponsoring organization.

12 The final plan, the Adverse Risk Plan, as
13 you can probably tell by the word, is not something you
14 want to raise your hand and say I want to be in this plan.
15 This plan has been designed with the substandard employer
16 in mind, meaning employers that, for whatever reason, have
17 not been complying with the rules and regulations that you
18 see in that one rule handout in front of you. It also has
19 been reserved for employers that continuously have greater
20 than expected losses.

21 What will happen is, if employers are placed
22 in this plan, based on the criteria that are in the rule

There is one side benefit to the Adverse Risk Plan. Now that you probably know a little bit more about these alternative rating plans, and as Ed said, there are a lot more details that we can't cover, but since we have a little bit better understanding of what some of these plans are and how you might qualify, next I want to talk to you about the process for qualifying for

1 coverage under one of these plans.

2 Basically, there will be applications that
3 you will be asked to fill out, and you will be asked to
4 describe what is your business? What do you do? What
5 coverage plan are you interested in? And depending on the
6 plan that you're wanting to apply for, there will be other
7 types of information that would be requested.

8 For example, in the Deductible Plan, because
9 we are allowing you to self-insure a portion of your risk,
10 certain financial information would then be requested to
11 make sure that you have the ability to meet that
12 obligation under the deductible. Another thing that might
13 be asked would be your specific loss experience, if you
14 have a safety plan in place, things of that nature.

15 Once the application is completed by
16 yourself and you send it back to the Division, a Division
17 representative would be responsible for reviewing that
18 application and determining if you, in fact, qualify for a
19 specific coverage. Once that coverage has been approved,
20 then you would receive written documentation of which
21 coverage plan that you have qualified for and what
22 coverage period you have been eligible for.

1 One of the things that we are considering is
2 the potential to offer alternative coverage periods other
3 than an annual period, and that might be something that
4 would be considered in the application process.

5 There is, however, another process, which is
6 the Mandate Process, that would be used, for example, in
7 the case of the Adverse Risk Plan. This would be
8 something that obviously, the Division would not take
9 lightly. It would require various approval of the
10 Division before an employer would be mandated for a
11 specific program. Any mandates would be based on the same
12 information that is used in a standard application
13 process. The only difference, however, is that the
14 mandate is deemed as a final decision by the Division and
15 it's not a negotiative process.

16 Okay. A little bit about how you qualify.
17 Let's say you are very much interested in a deductible,
18 filled out the application. It's been approved. You've
19 been covered for, let's say, a year. Now, you're probably
20 wondering okay, can I continue to be in my Deductible
21 Plan? What will happen is, there will be a series of
22 reviews that the Division will be conducting.

1 One of those is a scheduled review, which
2 would typically happen at the end of a coverage period or
3 at the receipt of the audit information, which Cheryl is
4 going to talk to you about. At that time, a Division
5 underwriter would look at the experience that you've had
6 throughout that coverage period, look at the financial
7 information, look again at the application, and perhaps
8 request an additional application or additional
9 information that had been provided previously on the
10 application.

11 Another big thing that will be looked at is
12 what kind of losses have you experienced throughout the
13 coverage period. All of that will go into the decision to
14 determine if eligibility is still there for that plan.

15 Another type of review that may occur is a
16 review based on a series of requests, and these requests
17 can either be those from employers or those from Division
18 representatives. In the case of an employer, perhaps a
19 request might be gee, I've changed my operation or I've
20 purchased a new business. Am I still in the same
21 classification?

22 That question might come into the Division.

1 At which point, someone responsible for looking at that
2 employer's account would recommend perhaps that a field
3 auditor go out and audit the operation to make sure that
4 that employer is still doing the same kind of activities.

5 Another case where a review might happen is,
6 there is a request from a Division representative. Let's
7 say one of the claims handlers noticed that a particular
8 employer has experienced a claim that really doesn't look
9 like a claim that should occur in his or her
10 classification. At that point, again, perhaps another
11 field audit would be requested, and a field auditor would
12 go out and take a look and make sure the operation is as
13 the Division understood it to be initially. So, that's
14 kind of the review process that will happen to determine
15 continuing eligibility.

16 As you can see, it's not really a one way
17 street. The success of these plans depends on the
18 employers complying and interacting with Division
19 representatives, and as well, it depends on the success of
20 the Division representative to make sure that they have a
21 complete understanding of what employers are doing.

22 Now, Cheryl is going to talk to you a little

1 bit about the field auditing process, as well as the
2 credit management and procedures that will help support
3 the administration of these plans.

4 MS. RANSON: Thanks, Amy. I am Cheryl Ranson,
5 and before we get going here, I just would like to tell
6 you that I really wish my mom could be here this morning.
7 Not that she hasn't heard me speak on numerous occasions,
8 but so that she'd get a chance to see me finally walk down
9 the aisle. That's her big dream. So --

10 I'm going to talk to you a little about some
11 common sense issues this morning, and this first one is,
12 while we were conducting a phase of some private audits,
13 we found that approximately one-third of the employers
14 that were in this study were not classified correctly.

15 Now, you all have heard Chris talk about how
16 important it is to be in the right classification for our
17 new ratemaking methodology. Some of the things that could
18 possibly be found is we might have loggers classified as
19 truckers. Loggers drive trucks, right? Is that the same
20 risk, though, as someone who maybe drives a furniture
21 truck, someone that cuts down the trees? I don't know.
22 Neon glass manufacturers classified as advertisers. Can

1 anyone see how that can happen? What's most of the signs
2 that you see out in front of businesses? Neon.

3 If you're in the chemical or manufacturing
4 business or you know anything about those types of gases
5 on your periodic table, you know that that's probably a
6 pretty high risk and probably a lot higher risk than just
7 basic advertising. Some high risk occupations classified
8 as clerical who's subcontracting. There's a lot more
9 subcontracting going on than there ever has been in the
10 past. In the past, most of your subcontracting was for
11 secretaries and things like that. Now, you can
12 subcontract for almost any type, especially with the
13 downsize that's been going on.

14 The last one, salesmen classified as
15 manufacturers. This may have happened to some of you in
16 here. Originally, your business might have been
17 manufacturing, and then maybe after ten years or so, you
18 decided well, it's probably just easier for me to just
19 sell these items, but you don't contact the Fund and tell
20 the Fund that. So, you're continuing to pay at
21 manufacturing rates rather than sales rates.

22 So, one of the things that I want to impress

1 upon you is for all of these people that are classified
2 incorrectly, not only is the class that they're in wrong
3 as far as the information that we need to collect for
4 ratemaking purposes and assessing risks, but the classes
5 that they should be in are also wrong, and that's
6 something I'm not sure -- It is a common sense thing, but
7 I don't know that we think about that that often.

8 What are we going to do about this? We're
9 going to start conducting some field audits, and there's
10 going to be three main components of the field audit.

11 The first one is going to be, as we were
12 talking about, classifications. We have to be able to
13 identify the employer's true risk to assess it if we want
14 to make our rates fair and equitable for all parties.

15 We also want to ensure that employers are
16 reporting payroll correctly. I would venture to guess
17 that everyone in this room is reporting their payroll
18 correctly. But do you want to be the majority or the
19 minority of people when we talk about payroll reporting?
20 So, we want to make sure that not only payroll is
21 reported, but it's reported, again, in the right
22 classification.

1 We also want to look for possible safety and
2 loss control candidates. We know a lot of employers
3 operate safe shops out there. We also know there are some
4 employers who are lucky, that they might be accidents
5 waiting to happen. So, we're going to be giving a
6 preliminary safety survey to these employers as part of
7 this audit. And once we score that, hopefully, we'll be
8 able to pick out some potential problems and pass that on
9 to our safety director and our Risk Management people.

10 Who are we going to audit? Well, initially,
11 we're going to audit 4500 employers. Now that we have our
12 computer system in, we're starting to get more information
13 that's valuable to the Division, more than we've ever had
14 before, and we found that approximately 4500 employers
15 make up 85 percent of our premium.

16 Just think if we could get all of those
17 employers classified correctly. That would go a long way
18 to making our rates more accurate. And then if you think
19 about 85 percent of the premium, well, there's only 15
20 percent left, and we're saying that two-thirds of those
21 people are classified correctly.

22 So now, we might be talking about numbers

1 like 95 percent of our premium being classified correctly,
2 and that's going to be a big step in the right direction
3 to getting these rates where we want them to be.

4 Other areas that we're going to be looking
5 at, we're going to be looking at classes that have a
6 history of under reporting or default or
7 misclassification.

8 One of the things that I wanted to say that
9 I should have said with the first line is, a lot of these
10 problems with misclassification could have been ownership
11 of the Fund, and it could have been problems with the
12 employers. But we're not going to look in the past to
13 this. We are looking to the future and try to straighten
14 this out, and that's what we hope to do with these audits.

15 The last one under who, we're also going to
16 be auditing people that we get requests from various
17 places, such as our Fraud Unit. But what I want to point
18 out is the employer. I can't tell you how many employers
19 call me, and I may have talked to some of you in this
20 room, and say I know XYZ Company is operating and they're
21 not paying Workers' Comp, and I can't be competitive with
22 them. And I say well, okay, you know, let me give you our

1 Fraud Unit number. You can report them anonymously. And
2 they say well, that's your job and you should know about
3 that. But we can't fix something that we don't know
4 about.

5 So, I would encourage you, if you know
6 people that are out there that are not paying Comp or
7 perhaps are paying maybe under the table -- It does hurt
8 you and it hurts your rates, because they're in your
9 class, and you're essentially paying premiums for them.
10 So, I would encourage you, if you know about that, to
11 report those to the Division.

12 What are we going to do on these audits?
13 Well, this shouldn't be surprising since we talked about
14 what we're going to be looking that. We're going to be
15 doing premium audits. We're going to be looking at,
16 obviously, classification studies and preliminary safety
17 reviews.

18 Now, you're probably sitting out there -
19 especially if you have tried to get to me on the phone;
20 well, I've been on the road - and you're saying how in the
21 world is the Division going to have enough people to go
22 out and do these audits? Well, what we're going to do is,

1 through an RFQ process, we're going to contract with
2 qualified CPA's, PA's, and other individuals to go out and
3 audit these people for us.

4 Now, that process will be administered at
5 the Division by some Division employees, who will review
6 the audits and act as a liaison between these CPA's and so
7 forth and the employer. But they will be assigned by
8 Division staff.

9 When is this going to happen? Well, we're
10 due to start out January of 1997. Why are we attacking
11 this first? Because this is a major step to getting our
12 rates in the fair and equitable place that we want them to
13 be as a result of this project.

14 Where is this going to happen? It's going
15 to happen on site. It's going to happen at your shop. We
16 can't really determine what you do unless we come out and
17 see it. So, that's where we're going to be going, in a
18 town near you January, 1997.

19 Okay. The next section that I want to talk
20 about is really Section 14 of the rule, and these are some
21 questions, as I was reading the rule, I was asking myself,
22 and you might be asking yourself, if you were here.

1 Wouldn't it be nice if our Division could shift premiums
2 from those who are willing to pay, which is, again,
3 probably the majority of you in this room, to those who
4 should pay, to those individuals that you read about?

5 It might be an extreme case, but you
6 certainly read about them in newspapers. Wouldn't it be
7 great if we could shift the premiums to those individuals
8 who actually should be paying? The same way, if the
9 Workers' Compensation Division could be proactive rather
10 than reactive in dealing with employers.

11 I used to work in private industry in
12 accounting, and I can tell you -- and some of you back
13 there said you were CPA's and some of you were in
14 business. Do you treat your receivables clients the same
15 if they're a bad credit risk or good credit risk? You're
16 probably not in business if you treat them the same, the
17 good credit risks and the bad credit risks, as far as your
18 receivables clients, and that's what we're going to do.
19 We're going to be determining credit A, B, or C type
20 ratings for employers.

21 Could the Worker's Compensation Division
22 make more on its investments if we got our money faster

1 and needed less premiums to cover our policy? Well,
2 hopefully, Section 14 of this rule is going to allow us to
3 do these things, and there's mainly two sections to this
4 part.

5 The first one, as I said earlier, we are
6 going to assign a tax liability rate to employers. This
7 liability rating will impact frequency of payments, but it
8 will also impact the type of plans that are available to
9 you. If you're a high risk, as far as a credit risk
10 employer, then maybe something like a deductible might not
11 be available to you, something where we're going to be
12 relying on billing you and having you pay us back. So,
13 that's going to be very important. And we're also going
14 to determine the frequency of the premium deposits.

15 Our credit ratings A, B, and C, you can look
16 at that. The first part is common sense. You know
17 yourself if you're going out to determine credit of a
18 company, you get a look at its financial statements and so
19 forth. But the second, the other factor, the intangibles,
20 that's what we're going to be considering. For example,
21 what type of industry are these employers in? Is it a
22 declining industry? Is it an industry on the rise?

1 What's their prior management history? Has the Fund had
2 trouble with the managers of this company in the past?
3 Did they open a company that did not pay Workers' Comp,
4 shut the company down, open up another company, and so
5 forth? This rule helps, I guess, close that loop hole.
6 Employers are no longer going to be able to do that. And
7 we're also going to look, again, with prior payment
8 history to the Division.

9 One of the things I want to point out on
10 this slide, some of you out there are probably saying
11 well, I have good credit, but you're having to give me a
12 \$100,000 line of credit, because I'm too small. You'll
13 notice that these categories say tax liability not to
14 exceed. So, therefore, a small employer could have an A
15 credit rating and still maybe having a tax liability of
16 \$5,000 or so.

17 One of the things that Section 14 is going
18 to allow us to do, and those of you out there, if this
19 starts looking a little confusing or a little complicated,
20 talk to the people that do your payroll. I know there's
21 some CPA's in the back of the room. If you're familiar
22 with the Circular E, which is the 941 tax laws, as you

1 read Section 14, this is going to mirror that. The
2 deposits are going to mirror it. The titles are going to
3 be the same.

4 One of the things I do want to point out
5 just a little bit different is \$500 or less premium for
6 the fiscal year. We're just going to have you pay that
7 annually. No more of those quarterly reports that you
8 have to fill out and pay that -- what is it, \$50 premium
9 now every quarter when you might have a premium of \$2.50?
10 I was talking to somebody last week, and that's what they
11 told me.

12 Cases like that, you're going to basically
13 pay your Workers' Comp at the beginning of the year, and
14 then at the end of the year, you'll fill out a form, and
15 we'll just equal it out with the Fund or settle up. So, I
16 think that will save you paperwork and that will save us
17 paperwork, and I think that's really a more realistic
18 approach to that. You don't have a lot of small employers
19 in this state.

20 The other part of this slide I'd like to
21 point out to you, one is that as we get down towards the C
22 credit rating, if you look at that, we want our money

1 faster. If we think you're a high risk, we want our money
2 from you faster than we do from someone that we know is a
3 good credit risk, someone that we know is going to pay.

4 Now, again, being a bad credit risk doesn't
5 mean that you're necessarily a bad employer or a bad payer
6 or so forth. You may not have the cash flow to make that
7 quarterly payment. It might be a pretty big payment for
8 you. It might be a bad time in your business cycle. If
9 you're a contractor, it might be a bad time for you as far
10 as how the projects are going that you're working on. So,
11 it might be easier for you to pay weekly or every other
12 week.

13 The next two pages that you have in that
14 presentation are simply flow charts, very similar to what
15 the IRS puts out for the 941 payroll tax deposits, and you
16 can look at those at your leisure.

17 You're probably asking yourself, as I would
18 be asking myself if I was out there, what happens if I
19 don't deposit enough money? Well, if you have what's
20 called a Safe Harbor Rule, which is the same as what the
21 IRS Safe Harbor Rule is, and you can look at that.

22 One of the things I want to point out is, if

1 the deposit shortfalls are larger than the amount allowed
2 by the Safe Harbor Rule or if you don't deposit those
3 shortfalls by the makeup date, then there will be
4 penalties and interest assessed.

5 The last page that I have of the
6 presentation is sort of a hodge podge, things that came to
7 me as I was reading the rule that I thought might come to
8 you, and the first one is, well, what if I have to make my
9 deposit, I go to the bank, and it's closed? Well, then
10 the deposit is considered timely if it's made by the close
11 of the next banking day, just as the IRS does.

12 And the last one I want to point out on here
13 is this one (indicating). You see a lot in the news about
14 it. The IRS is moving to electronic deposits. Are any of
15 you there involved with that yet for your payroll taxes?
16 You might possibly want to know if the Division is going
17 to be leaning in that direction, and we are going to be
18 leaning in that direction, but we've got to get our
19 deposits down pat first and get that system working
20 smoothly and get all the bugs worked out before we move to
21 electronic deposits.

22 Now, Ed Staats is going to talk to you a

1 little bit about what you can anticipate in the future,
2 and as he's coming up the aisle, I would like to --

3 MR. STAATS: I did that many years ago.

4 MS. RANSON: My mother would be proud. I do
5 have to tell you that I know you haven't had time to read
6 all 61 pages of this rule, but we are going to be having
7 educational sessions. For example, you might not know
8 which plan is the best for you at this time. So, we're
9 going to have educational sessions on that. We're going
10 to have educational sessions on the ratemaking
11 methodology, so that we can really dig down in there and
12 figure out what's going on with your rate. So, those will
13 be coming.

14 MR. STAATS: Let me, just briefly, give you
15 some pieces of information that will reflect impacts. We
16 talked about the \$500 annual limitation if you're a small
17 business. That impacts 13,000 small companies in the
18 State of West Virginia. We believe that to be a positive
19 impact.

20 And we talked about the Field Audit Pilot
21 Program. They mentioned to you that if you're in the
22 wrong class and you're underpaying your premiums, for

1 instance, or overpaying those premiums, you impact
2 improperly the class that you're in, as well as the class
3 that you should be in. We also told you that there are
4 4500 employers that represent about 85 percent of our
5 total premiums.

6 The results of that pilot program, if we
7 extrapolate it to those 4500 employers, indicates that
8 there are 1500 employers misclassified. It indicates that
9 there is a potential net costship to the employers who are
10 properly classified of approximately 15 million dollars a
11 year.

12 The correction of your rate through the
13 Field Audit Program will have a significant impact, and we
14 cannot go forward without that assessment.

15 Does anybody remember the ketchup commercial
16 several years ago, white background on television, ketchup
17 bottle turned upside down like this (indicating), ketchup
18 just slowly oozing out of it, Carly Simons in the
19 background singing anticipation? Well, that's how fast
20 you can expect us to implement this rule.

21 Over the past several years, we have made
22 significant changes in order to be able to present this

1 type of program to our state holders. We have made
2 changes in claims management. We have crafted changes in
3 receivables management. We have changed financial
4 reporting. We've upgraded our people skills. We've
5 changed our technology significantly. We've followed a
6 constant vision for the development of a better Workers'
7 Compensation System in West Virginia. And those
8 foundation pieces are so critical in order for us to be
9 able to do something like this.

10 But even all that work has not yet overcome
11 all the obstacles that we face, all the obstacles that are
12 so necessary for us to be able to implement it. Those
13 obstacles still include a critical need to cleanup
14 information, such as the field audit effort, a critical
15 need to be able to support what is perhaps one of this
16 country's most sophisticated costing systems for Workers'
17 Compensation claims.

18 The MIRA System that we use with 196
19 different costing variables, which includes such
20 interesting things as hobbies and the impact of costs,
21 attorneys, addresses, types of occupations, medical
22 premiums, very sophisticated system is now being copied

1 across the country.

2 There's a critical need to change our
3 existing complement of human skills to include insurance
4 and risk management skills that are possessed by the type
5 of people that did this presentation today, a high degree
6 of technical skills, as well as the commitment to do
7 whatever it takes to improve the system, and a critical
8 need to educate the state holders as to the impact of
9 their actions on their rates and on this system.

10 You have to understand this system. We
11 cannot implement it overnight. The obstacles to success
12 are very great. But we're so much closer to being able to
13 do something like this than this Fund has ever been able
14 to do before. It's like every solution, though, it all
15 has their sets of problems.

16 Some of the problems that this rule is going
17 to create for you and for us, for instance, if it is not
18 happening now, it will happen shortly. As employers,
19 you're going to be inundated with proposals from
20 organizations developing loss control programs, offering
21 to administrate great group programs for you, helping to
22 -- wanting to assign you and help assign you to the

1 various types of financing plans.

2 The employers are going to have to judge
3 those proposals on a what's in it for me basis. Who will
4 do the best job for me or my group? What services are you
5 going to get out of these organizations? What reports do
6 you have to file? What kind of criteria do you have to
7 maintain to be part of that group? And can you maintain?
8 What is your risk of being part of that group?

9 There is an element in this rule that talks
10 about joint and several liabilities as a result of being
11 part of a group for Workers' Compensation obligations.
12 You need to assess that risk very carefully. What are the
13 costs of being part of that group? How does this impact
14 your total investment in loss control?

15 This rule also requires that the Fund be
16 able to exercise some informed judgment, skilled personnel
17 to exercise that judgment. Failure to do so will create
18 inequities in this system beyond those of what we're
19 trying to cure, and it will bring additional inequities to
20 the system.

21 This rule requires that employers change how
22 they work within the system and how their representatives

1 work under the authority established by the Performance
2 Council with adequate safeguards for review reversal of
3 improper judgments or abuses made by the Fund. This rule,
4 this approach can be very successful.

5 Successful implementation will generate
6 significant benefits to the employers and employees in
7 West Virginia. The most significant of which is the
8 opportunity to share what's going on all across this
9 country.

10 There are stories and examples of successes
11 where employers and their employees working together have
12 prevented injuries, have reduced their Workers'
13 Compensation costs, and have shared the benefit.

14 What would happen to your rates in your
15 operation if system-wide we could reduce serious injuries
16 by ten percent in this state? By 20? By 30? That has
17 occurred in other parts of the country. It is not
18 occurring here. Part of the reason is that the Workers'
19 Compensation System has not provided the incentive to do
20 so before. This rule is designed to provide that
21 incentive. That is one of the major benefits of this
22 approach.

1 Another benefit may be to the state as a
2 whole. Workers' Compensation has a financial impact on
3 tax policy for the state as a whole. It impacts our
4 credit rating in the financial markets. Improvement in
5 that rating will change how you pay your individual income
6 taxes.

7 It is an opportunity under this rule, we
8 believe, for everybody to win except for those who do not
9 attempt to control and prevent injuries. As under this
10 rule, they will be more responsible for paying the cost of
11 insuring their risk, and this approach is not intended to
12 allowed the shifting of that risk to other employers in
13 this state.

14 This is not a panacea. We don't have all
15 the answers. We're going to learn the answers as we
16 implement. You're going to learn with us. We think we're
17 headed in the right direction. We need you to tell us if
18 we're headed in the right direction. We want you to tell
19 us if we're headed in the right direction, and if we're
20 not, we want you to help correct that direction.

21 Randy Suter is going to go through some
22 commonly asked questions. This is the sixth time that

1 we've done this presentation. And then if you have
2 additional questions, please ask.

3 MR. SUTER: That's the first time I've got to
4 walk down the aisle. I was thinking about coming in from
5 the side room, because I can remember quite a number of
6 years ago, the preacher holding me down to make sure I
7 wasn't going out the back door, but as you recall, some
8 fellows do get to come in the side entrance.

9 The opportunity for public comment will come
10 after this section.

11 We've had five of these meeting so far.
12 This is our sixth meeting. We've had some pretty
13 interesting questions along the way. One fellow in
14 Parkersburg, I can recall, looked up and said hey, I'm a
15 small employer. I want to self-insure, but you have a
16 million dollar security requirement for me to be self-
17 insured. Why can't I do that? Aren't you going to lower
18 this? And on reflection, we didn't want him to self-
19 insure. You don't want him to self-insure, and if he knew
20 what the responsibilities were, he wouldn't want to self-
21 insure.

22 For example, one severe injury claim -- I've

1 worked on claims from time to time, and I noticed here not
2 too long ago I had a severe head injury that had \$300,000
3 just in medicals. We're talking about the person that
4 probably, as a result of a severe head injury, that would
5 more than likely be getting a check for the rest of
6 their life on a permanent total disability that would
7 drive that employer who wants to self-insure -- that's
8 driven straight into bankruptcy.

9 Of course, if we drive an employer like that
10 straight into bankruptcy by not using good judgment, then
11 the Fund pays. Well, who's the Fund? Is it me? You
12 know, two weeks, whenever I get my paycheck, are they
13 going to take an extra ten bucks for mine and just share
14 the rest? No. It's you. You're the Fund, and the
15 employees that work for us are also the Fund, because the
16 rates that you pay are that much less than you can afford
17 to give your employees. So, we're all in it together.

18 The alternative to this particular question,
19 to this particular gentleman that had asked it is that we
20 can provide alternative methods now to guaranteed costs
21 into self-insured.

22 For example, the person, if they had the

1 financial wherewithal, could have a Deductible Plan. That
2 might fit their needs. They have very few claims, for
3 example. But they want to protect themselves against
4 those catastrophic claims where, let's say, for example,
5 one of their employees is electrocuted. I was looking at
6 a claim the other day where the gentleman had been
7 electrocuted. His hands were burnt. Necrosis set in.
8 For the last couple of decades, the man has had hooks
9 instead of hands. Rehabilitation in those types of
10 injuries, it goes on, and we spread that cost. So, we
11 also have to spread the word on safety.

12 Another question that we had is under the
13 Deductible Plan, why is it a reimbursable deductible?
14 Maybe I ought to explain what that is. The Fund pays.
15 The employer that has the deductible reimburses the Fund.
16 Why did we do that? We may end up with employers who get
17 into these programs who are not willing, for whatever
18 reason, to pay the amount that they should, the initiative
19 deductible to the employee, and we're going to have to pay
20 it anyhow. We're going to force them to pay it to
21 reimburse us.

22 The second thing is we need to find out what

1 an employer's risk is. Self-insured, the large employers
2 that are self-insured, we know what their risk is. We
3 know what their claims experience is when it comes in. We
4 want to keep track of folks in deductibles to know what
5 their risk is going to be also.

6 What happens if they go into a Guaranteed
7 Cost Plan with a deductible? They've taken all of the
8 claims that they'd had. They've reimbursed them directly
9 as opposed as through the Fund. We're not going to know
10 what to charge them for a regular subscriber, because we
11 don't know what their risk is.

12 There was another question with regard to
13 deductibles in particular, and that was, why are there
14 security requirements? It depends upon the size of your
15 deductible. Obviously, if you want to have a large per
16 claim deductible, then the Division needs security in
17 order to offset the employer's failure to pay, because if
18 that employer fails to pay, then the Fund pays, and you
19 know who the Fund is.

20 When will this rule be implemented? We've
21 heard a little bit of that up to now. There's some people
22 that -- I think Mr. Staats mentioned a company that came

1 in and said I want a retro; sign me up now. There are
2 other people we've heard comments from that said we need
3 to delay this. We need to look at this again and again.

4 Well, our position is that we have to phase
5 it in in a rational manner. If on November 1st, when we
6 file this rule, we begin to offer all of these different
7 plans, it would be a shock to the system that we couldn't
8 administer it right. That's why we need to have the right
9 people in place to help administer this particular
10 program. We want to do it right. We don't want to
11 halfway do it. That's why we're anticipating that being
12 in place over the course of 18 months or so from the time
13 it's filed.

14 It's interesting that November 1st was the
15 date that was picked for filing, and that date was picked
16 quite a while ago. You all know that there's an election
17 in the early part of November. This is something that
18 transcends politics. This is too important to have
19 politics interfere with what we're providing, and I
20 believe the Performance Council has indicated that they
21 wanted to beat the election.

22 I had a question a couple of days ago from a

1 gentleman that I thought was pretty interesting. He said
2 will this affect my -- these new making methodologies,
3 will this affect my positive balance? I didn't know what
4 he was talking about. Frankly, I didn't understand.

5 The reason I didn't understand was because
6 are there any other insurance plans that you can think of
7 where you think in terms of a positive balance? You get
8 your car insurance every year. You pay it, and they send
9 you a statement at the end of the year, and they say well,
10 gee, you've paid this amount, and you've had claims of
11 this amount. It never happens.

12 That's the kind of statement you get from
13 Workers' Compensation. It's a mis-communication. You
14 have paid for the costs of the insurance for the period.
15 We have to price it right.

16 Another common question with respect to
17 Group Retrospectives -- The group plan in here is a Group
18 Retrospective Plan. There is a minimum premium threshold
19 requirement of all members in the groups, as stated in
20 this particular plan, of \$500,000. Many people indicated
21 to us that that was too high for a group.

22 We're taking a look at that. We've taken

1 that -- We've tried to take the best of the best from
2 different states, and this particular provision was taken
3 was Pennsylvania. Their needs are different than ours.
4 We want to look at that particular provision, and we're
5 anticipating reducing it somewhat.

6 And always a common question is what is the
7 Division doing to help us reduce our premium costs?
8 There's been a number of initiatives undertaken to help
9 you reduce your premium. This rule primarily is one of
10 them to give you more control of the costs that drive your
11 premium rates. But as far as other innovations in the
12 system, Claims Management has undertaken a significant new
13 wrinkle in the last couple of years, where claims are
14 managed by teams of individuals.

15 It used to be an assembly line process,
16 where I got the claim. It's my job to figure out whether
17 or not we rule it compensable initially or we ship it
18 someplace else, and it goes down the assembly line, and it
19 finally filters its way to who knows where.

20 Now, there are teams assigned to geographic
21 areas that look at the entire claim, so they all know
22 what's going on with it from beginning to end. Seventy

1 thousand claims or somewhere thereabouts, that's a lot of
2 claims to keep track of.

3 Workers' Comp is taking a more active role
4 in the investigation of employers and of claims. That's
5 something you need to consider. Again, if an employer
6 doesn't pay, the Fund pays, and you're the Fund.

7 There are a couple of other initiatives that
8 the Commissioner hit on briefly. Some of you are familiar
9 with it. We've had other public hearings. I saw Mr.
10 Price from Beckwith Lumber in Morgantown not all that long
11 ago. And they're the Qualified Risk Management Program
12 Rule and the Loss Prevention Rule; one being a mandatory
13 program for employers with bad experience to implement
14 safety, the other being a voluntary program for employers
15 to engage in, and basically, Workers' Compensation
16 underwrites the cost of that program by providing the
17 premium credit.

18 So, we're undertaking some initiatives.
19 What we want to do is to make sure that the employers that
20 make the charges to the system are the ones who pay for
21 it.

22 I would like to make a couple of points. We

1 have a survey. I would appreciate it if you could fill it
2 out. It's in your packet of materials. There's quite a
3 bit of information that we would like to have. We care
4 about what you think.

5 MR. RICHARDSON: Are you going to ask for
6 questions?

7 MR. SUTER: I can.

8 MR. RICHARDSON: Go ahead.

9 MR. SUTER: Yes, sir.

10 AUDIENCE: Concerning the existing program
11 that is in effect for Workers' Comp, there was like a
12 three-year probationary period.

13 MR. SUTER: Would you stand and state your
14 name, please? I'm sorry. Because we have a court
15 reporter here, and we need to get everyone properly
16 identified.

17 AUDIENCE: I don't know if I want to ask
18 that then, if you're going to record it.

19 MR. SUTER: Well, this is a public hearing,
20 sir. Everything is recorded.

21 I'll tell you what, afterwards, you can go
22 ahead and ask. We'll be happy to respond in any fashion.

1 I'll be here after the meeting.

2 AUDIENCE: Okay.

3 MR. SUTER: Anything further?

4 (No response.)

5 MR. RICHARDSON: I can probably anticipate the
6 question. I think it was probably going to be on whether
7 there would still be a period, like the three-year period,
8 for employers experience. Is that the kind of thing you
9 were interested in, is whether they're still going to be
10 doing that?

11 AUDIENCE: No.

12 MR. RICHARDSON: Well, if you want to talk
13 individually with someone, please get together with Randy.

14 Now, at this point, that concludes the
15 educational portion of today's presentation. I hope that
16 you have found this informative. I hope that as you
17 consider the issues that have been presented to you, you
18 will complete the survey and submit it to the folks with
19 the staff.

20 At this time, I would like to open the
21 meeting for public comment. If you would like to provide
22 testimony, if you would like to provide a comment

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2

4

5
6
7

82

9

10
11
12
13
14
15
16

17
18
19

2011

21	
22	

1 (No response.)

2 MR. RICHARDSON: Members of the Council, would
3 anyone like to provide any thoughts or comments at this
4 time?

5 (No response.)

6 MR. RICHARDSON: Let me once again reemphasize the
7 process that we will go through. October 8th, as noted on
8 the proposed regulations, is the final day for public
9 comment. Staff and members of the Performance Council
10 will review the comments that we receive. We will develop
11 a statement of each comment and a response to each
12 comment. Any adjustments in the regulations will be made,
13 and our goal is, once again, to try to implement this
14 regulation by November 1st. I'm sorry. Let me say our
15 goal is to promulgate the regulation by November 1st. We
16 want to reemphasize our recognition that this
17 implementation process will be a good year and a half to
18 develop it.

19 I'm going to tell Elkins that this has been
20 the largest turnout for any of our public hearings so far.
21 We have over 90 people here today, and I am very, very
22 grateful for the interest that you have shown in this

1 community on this subject matter. I'm just thrilled that
2 we've had this kind of turnout today in Elkins, and my
3 guess is though, in all candor, that it will be short-
4 lived, because tomorrow is the hearing in Charleston.

5 With that, I want to thank you all for
6 coming, and I appreciate your time.

7 (WHEREUPON, the public hearing
8 was concluded at 12:40 p.m.)

REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,

COUNTY OF RANDOLPH, to wit:

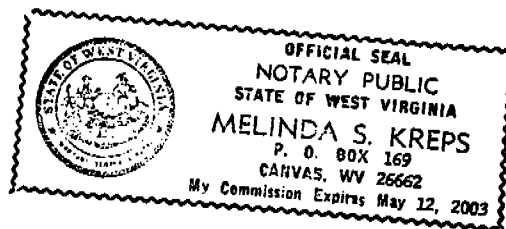
I, the undersigned, Melinda S. Kreps,
Certified Court Reporter and Notary Public in and for the
State of West Virginia, duly commissioned and qualified,
do hereby certify that the foregoing is, to the best of my
skill and ability, a true and accurate transcript of all
the testimony adduced or proceedings had in the
aforementioned case, as set forth in the caption hereof.

Given under my hand this 11th day of
October, 1996.

My commission expires May 12, 2003.

Melinda S Kreps

Certified Court Reporter
Notary Public



**NFIB**National Federation of
Independent Business

TO: Workers' Compensation Division / Performance Council

FROM: John R. Hodges, State Director

RE: 85 C.S.R. 9, Risk Management

Before commenting on 85 C.S.R. 9, Risk Management, the members and I would like to commend the Performance Council and staff for their efforts in drafting the rule. We welcome the opportunity to make comments and hopefully voice our concerns so that the rule will be as effective and useful as possible.

85-9-9.6 Deductible Plan, Security and Bond (page 23)

- The Division is encouraged to make security requirements as simple and reasonable as possible so that small employers can take advantage of this option. Alternatives such as requiring increased premium deposits should be considered.

85-9-10.2.c Group Retrospective Rating Plan, Homogeneity (page 26)

- The requirement that all employers in a group be in the same classification should be clarified to allow the members to be in the same ratemaking classification (governing class). This is the requirement by other monopolistic states where group programs are offered (such as Ohio and Washington). Our understanding of the present system is that there are 259 classifications (modified codes) and 91 (governing classes).

85-9-10.2.d Group Retrospective Rating Plan, Size Requirements (page 26)

- The requirement that the group have aggregate premiums of \$500,000 should be reduced or eliminated. This requirement, combined with requirements mentioned earlier in 85-9-10.2.c, will severely limit the ability of organizations to form groups in West Virginia. Washington has no number of risks or aggregate premium requirements and Ohio requires 100 risks and/or \$100,000 in premium in order to form a group.

85-9-10.7.a Group Retrospective Rating Plan, Schedule of Adjustments (page 29)

- The number of annual interim premium estimates and the timing of the final reconciliation should be clearly stated at the beginning of the retrospective rating policy rather than by agreement between the group and the Division after the policy period begins.

Employers Service Corporation

Corporate Office • P. O. Box 3389 • Charleston, WV 25333-3389 • 304 / 556-1100 • FAX 304 / 342-4036
Regional Office • P. O. Box 4580 • Lexington, KY 40544-4580 • 606 / 223-5288 • FAX 606 / 223-3248
Regional Office • P. O. Box 617 • Washington, PA 15301-0617 • 412 / 223-9339 • FAX 412 / 223-9266
Regional Office • P. O. Box 1567 • Abingdon, VA 24212-1567 • 540 / 676-3603 • FAX 540 / 676-0152

Workers' Compensation / Unemployment Compensation
Federal Black Lung / Nursing Support Services
Loss Control Management / Short Term Disability

ReRate To:

September 18, 1996

3 10th Floor
Mr. Randy Suter
Legal Services Division
Workers' Compensation Division
P. O. Box 3922
Charleston, WV 25339-3922

Re: Series 9 Rules

Dear Randy:

This letter is to provide you our comments on the Title 85, Series 9, Rules and Regulations entitled "RISK MANAGEMENT." First, we would like to acknowledge the Workers' Compensation Division's efforts in these Rules. We believe these Rules are much improved over the previous proposed Series 9 Rules that were under the title "Underwriting."

We have reviewed these Rules and offer the following questions, comments and concerns:

SECTION 3.11

This Section provides a definition of delinquent. One of the items listed mentions honoring pay orders. We suggest that the word "proper" be inserted between the word "honor" and "pay." The reason for this suggestion is that Employers Service Corporation receives many improper pay orders from the Workers' Compensation Division. Therefore, self-insured employers should not be required to honor improper pay orders which would only add to the Division's overpayment problems.

SECTION 4.6

This section reads as follows: "In general, only one risk classification is permitted per policy account. The Division shall assign to the employer the classification yielding the highest base rate consistent with the risk being assessed."

We recommend adding the word "premium" between the words "rate" and "consistent" in the second sentence. As written, this makes it sound like the Division will assign an employer the classification that has the highest base rate. The addition of the word "premium" will change this section to be in line with the Division's current policy which is assigning an employer the classification that produces the most base rate premium.

SECTION 4.7

This Section pertains to misclassifications and reclassifications. To summarize this complete Section, this Rule states that if the Workers' Compensation Division discovers that an employer has been placed in a lower premium rated classification and, as a result, has not paid at the proper premium level, the Workers' Compensation Division can go

Mr. Randy Suter
Re: Series 9 rules
September 18, 1996
Page 2

back to when the new operations began in order to charge the employer the additional premium. However, this Rule does not allow an employer to go back under the same terms if the Workers' Compensation Division has collected excessive premium. The Rule currently states that if an employer discovers that they are in a classification in which they are overpaying their premium, their classification is changed on a prospective basis only, unless the Division had erred in some way. We do not consider this Section to be fair and equitable. Therefore, we recommend that both the Workers' Compensation Division and the employer be able to go back five years in order to correct these type of classification questions. We feel this would be much fairer than the current Rule contemplates.

SECTION 4.7.c

The second paragraph of this Section states that "If the employer has a security shortage, the Division may use the refund amount to purchase additional security or annuities to reduce the undersecured employer's risk to the Division." For clarification purposes, the refund referred to in this section is in cases where the employer was in a higher rated classification as a result of an error by the Division and has overpaid premium. Our concern with this language is that the employer may have a security shortage with the Workers' Compensation Division, but the Division has agreed with a plan to eliminate the shortage over a period of time. In that case, if the Division has agreed with a plan, we do not feel the Workers' Compensation Division should hold the refund. We recommend this Section be changed to reflect this situation.

SECTION 4.9

This Section pertains to administrative hearings. The second sentence states "The commissioner, the executive director, an inspector or a designated hearing officer may issue subpoenas. . ." We do not believe an "inspector" should have the power to issue subpoenas. Therefore, we recommend that "inspectors" be struck from this Section.

NEW SECTION FOR SECTION 4

This Rule has eliminated a very important section of the Series 1 Rule which we believe should be added to Section 4 of this Series 9 Rule. We believe the current Series 1 language is sufficient as it states "When an employer has reported wages of an individual who is not an employee within the meaning of the statute and paid premium thereon, such employer shall, upon proper request being made of the Commissioner, be entitled to a refund of such premium for a period not to exceed the preceding five (5) fiscal years." Payroll reporting mistakes are going to occur and this Rule should state the parameters for correcting such mistakes.

SECTION 6.1.a.B

This section pertains to independent contractors and the criteria the Division will use to determine whether an individual is an independent contractor or an employee. This Section states "Such individual has not received any form of training either by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods."

Mr. Randy Suter
Re: Series 9 rules
September 18, 1996
Page 3

Many companies require their contractors to undergo safety training before allowing the contractor's employees to work on their premises. By listing this as one of the criteria, we believe the Division will discourage safety training which will increase injuries. Therefore, we recommend this language be deleted.

SECTION 6.1.b

This Section pertains to "seasonal employers." This Section states that the employer shall petition the Division sixty (60) days prior to the beginning of the coverage period to be considered a seasonal employer which would allow the employer to keep an amount on deposit less than their premium. In other words, if the employer wants to be considered a seasonal employer for the quarter October 1 through December 31, the employer would have to make this request by August 1. We feel this is much too early for this type of request. We believe that a period of 30 days prior to the due date for the quarterly premium report is more fair. Therefore, we recommend this change.

SECTION 6.2

This Section pertains to officers that can be eliminated from coverage. We recommend that at the beginning of the second sentence that you state this is "Based on West Virginia Code 23-2-1(g)," and put this phrase in front of the sentence "Certain employers may elect not to provide coverage to certain individuals deemed employees within the meaning of the Act, as follows. . ." We feel the Workers' Compensation Code should be referenced in this section.

SECTION 6.3.c.D

This Section pertains to amendments to the officers being elected. Section D states "Adding a person who has previously elected not to be covered under the provisions of Section 6.2 of this rule if the Division receives written notification sixty (60) days prior to the coverage period in which coverage is sought. If written notification is not received by the Division sixty (60) days prior to the coverage period in which coverage is sought, then coverage shall not be extended to such person requesting coverage beginning that coverage period." We believe that the sixty (60) days prior notice is too long. We believe that a period of fifteen (15) days provides plenty of notice to the Workers' Compensation Division in order for them to change their records. For instance, if an officer wants to be covered effective October 1, the employer would have to notify the Division of this by September 15. The Division would not send the quarterly report out until December, so the Division would have plenty of time to change their records. Therefore, we recommend this change be implemented.

SECTION 6.14

This Section states that "The Division has the authority to assign at any time an employer to any workers compensation insurance plan offered under the provisions of this rule." We understand the Division's need to assign employers to certain plans. For instance, if a self-insured employer is no longer able to be self-insured based on their financial strength, the Division should rescind their self-insurance privilege. However, we do not believe that

Mr. Randy Suter
Re: Series 9 rules
September 18, 1996
Page 4

the Division should, for instance, place an employer in a retrospective rating plan instead of a guaranteed cost plan if the employer does not like the risk involved in a retrospective rating plan. Therefore, we recommend this language be struck.

SECTION 7.4.c

This Section pertains to the experience period for the Workers' Compensation Rating Plan. This Section states that "The experience period used to determine experience modification factors shall be the three fiscal years prior to the fiscal year during which the annual rate calculations are made."

During public hearings held on the Series 9 Rule, several employer representatives made comments that because the Workers' Compensation Division was only going to use dates of injuries that occurred in the first three out of the last four completed fiscal years, that employers would not have any incentive to continue to manage workers' compensation claims prior to the experience period. We believe that with these Regulations, the same stance will be taken by employers. We understand that the Workers' Compensation Division is going to include the deficit in the premium assessments. However, we still believe that employers will not manage claims prior to the experience period because there is no direct incentive to do so. If the proposed rating system were in effect today, employers would have no incentive to defend claims that have a date of injury of June 30, 1992 or before. In excess of 50% of the claims presently in litigation by employers represented by Employers Service Corporation have dates of injury preceding July 1, 1992. If the Workers' Compensation Division would, in some way, include a prior loss adjustment expense which would directly effect an employer's premium rate, we feel this can be overcome. If employers do not manage their workers' compensation cases prior to the experience period, we believe the liability on the Workers' Compensation Division will grow, resulting in higher premiums. We also do not believe that the Workers' Compensation Division's personnel are in a position to manage these claims effectively. Their role has always been to act as an independent third party and not as a protector of the monies held by the Workers' Compensation Fund. Therefore, our concern in this area remains the same as the last Series 9 Rule that was proposed. This is a very serious problem that has the potential to undermine the fiscal solvency of the Fund.

SECTION 7.6.a

This Section states that "The name of each of the employer's employees for whom costs were incurred during the calendar year and the amount of such costs paid during the period covered by the employer statement; . . ." This Section pertains to the annual statement that will be issued by the Workers' Compensation Division. We believe this Section should state that the paid and incurred costs of the employer's claims that occurred during the experience period will be provided to the employer on an annual basis. In this way, the employer can verify that the claimants on the list are their employees and they will also be able to see the liability attached to each of their claims.

Mr. Randy Suter
Re: Series 9 rules
September 18, 1996
Page 5

SECTION 9.7.d

This Section pertains to the deductible plan that will be offered by the Workers' Compensation Division. We have two concerns regarding this Section. First, the second sentence states "The Division shall pay all costs of the claim or claims and seek reimbursement from the employer by the issuance of a pay order payable to the Division." We are disappointed in this language for deductible plans ranging from \$20,000 and higher. Because the Workers' Compensation Division will make these payments instead of allowing the employer to make the payments, we feel this will deter some employers, especially self-insured employers, from choosing to participate in a deductible plan. Therefore, we encourage the Workers' Compensation Division to allow employers with a \$20,000 and higher deductible to at least have the option to pay an amount up to their deductible directly to their employees instead of having the Workers' Compensation Division pay these benefits. Many employers want to be able to help their employees sooner than the Workers' Compensation Division will be able to process and implement the paying of benefits. The election to pay the deductible directly would be a part of establishing the deductible plan.

Second, the last sentence of this Section states "All incurred costs shall be utilized to determine the employer's experience modification factor notwithstanding the employer's payment of deductible amounts." To include the deductible paid by the employer in the rate calculation is "double-dipping." Not only is the employer paying the deductible out of their pocket, but they have to pay more premium since the deductible amounts will be included in the rate calculation. For example, an employer with a high frequency of small claims would not want a deductible program because the premium tax credit may not offset the aggregate deductible paid. The Division would benefit if such an employer were given incentive to select a deductible plan. We suggest that the deductible paid by the employer not be used in determining the employer's premium rate.

SECTION 9.9.c

This Section still pertains to the deductible plan. This Section states "Depending on the nature of the modification of business, the Division may require the employer to pay a fee. The fee is assessed to offset the cost incurred to perform any reviews, including actuarial reviews, to determine any new or additional exposure which the modification may cause."

We are opposed to any additional fees being charged to employers. The purpose of the administrative fees paid by employers is to cover the costs of the Workers' Compensation Division's personnel. We believe those fees are adequate to cover the cost of administration of the Workers' Compensation Fund. Therefore, we recommend this Section be deleted.

SECTION 10.2.d

This Section states that a group must have \$500,000 in aggregate premiums during the coverage period. We feel this amount is too high. We recommend an aggregate premium of \$250,000.

Mr. Randy Suter
Re: Series 9 rules
September 18, 1996
Page 6

SECTION 10.6.d.F

This Section states "Premiums identified as 'Non-Subject', after adjustment to reflect the increase or decrease in the basis thereof from the basis as estimated at the policy's inception." Non-subject premiums are not defined in the rules. Please provide a definition in this Section.

SECTION 10.7.a

This Section states "The Division will recalculate the interim estimated premium annually thereafter until all subject losses are settled or at an earlier time by agreement with the group when a final reconciliation and adjustment are computed." We suggest an additional sentence be added as follows: "In no case can the maximum reviews extend beyond five (5) years." We believe the Division should limit the number of reviews for group plans. Neither the group nor the Division would want unlimited reviews. The companies that make up a group will probably change every year and inevitably companies participating in groups will go out of business. This will cause a lot of administrative headaches for the group and the Division if the reviews extend beyond five years.

SECTION 10.7.b

This section pertains to the schedule of adjustments for the group retrospective rating plan. We believe this section needs time frames established for additional payment of premium by the group and refund of premium by the Division. We recommend sixty (60) days after the evaluation date.

SECTION 11.1.A

This Section pertains to individual retrospective rating plans. The Section states "The plan may be used upon election by the employer and acceptance by the Division. Further, the Division may assign an employer to this plan."

Our comments are the same as Section 6.14 above. We do not believe the Workers' Compensation Division should assign employers to an individual retrospective rating plan or a deductible plan instead of the guaranteed cost plan. This plan may be too risky for some employers. Therefore, we recommend this last sentence be deleted.

SECTION 11.4

This Section pertains to the individual retrospective rating plan. It states that "Coverage under a retrospective rating plan is available to an employer if the estimated standard premium is at least \$25,000." We believe this amount is too low. We recommend a standard premium of \$50,000.

SECTIONS 11.6.b, D & E

Each of the last sentences in these two sections mentions a "basic factor." We believe the basic factor needs to be defined in this Section.

Mr. Randy Suter
Re: Series 9 rules
September 18, 1996
Page 7

SECTION 11.10.a

We believe this section also needs time frames established for the additional payment of premium by the employer or for the refund of premium by the Division just as we stated in Section 10.7.b. Again, we feel the time frame should be (60) days after the valuation date.

SECTION 12.3

First, we applaud the Workers' Compensation Division for cleaning up the language for placing an employer in the adverse risk plan. However, we still have a few questions and concerns about the criteria. Criteria number 5 states "Whether the employer has failed to maintain the proper level of premium tax deposit." We believe this criteria should be eliminated because the failure to maintain the proper level of premium tax deposit causes the employer to be delinquent and possibly in default. Default is already covered by criteria number 4. The failure to maintain the proper level of premium tax deposit could be a one-time error made by the employer. In addition, criteria number 6 already covers this problem because it mentions being delinquent more than two times in any calendar year. Therefore, we feel criteria number 5 should be deleted.

Criteria number 7 states "When applicable, whether the employer has failed to post the amount of surety required by the Division." We believe this Section needs further clarification. We know that the Workers' Compensation Division is reviewing surety amounts and notifying some self-insured employers that they have a surety shortage. The Workers' Compensation Division is allowing employers to determine a plan to bring this shortage up to the required level over a period of time. We do not believe that an employer who has made an agreement with the Workers' Compensation Division to bring their surety up over a period of time should be considered in violation of this criteria. Therefore, we recommend adding additional language to this Section. Further, we believe it should state that only after due notice of the shortage and allowing 90-days to post the required amount, before the employer will be considered to have failed to meet this criteria.

Criteria number 8 states "Whether the employer has failed to make a payment or payments to a medical provider or the claimant, as required by the applicable provisions of the West Virginia Code or rules promulgated thereto." We recommend that language be added to state that this is only the case after a thorough investigation into the matter by the Workers' Compensation Division. As you know, in Section 3.11 I previously commented on proper pay orders. Self-insured employers should only be made responsible for paying proper pay orders and proper medical bills. Employers Service Corporation receives many improper pay orders and many improper medical bills. Self-insured employers should not be held responsible for paying any improper bills.

Criteria number 10 states "Whether the employer has been cited for failure to comply with any applicable federal or state safety laws or regulations." We believe this section should be deleted. We believe that Workers' Compensation Division activity should be the only criteria considered in this Rule. We do not believe the Workers' Compensation Division has the experience on staff to interpret other organization's safety laws or regulations. For instance an employer can be cited for record keeping errors that have no relationship to

Mr. Randy Suter

Re: Series 9 rules

September 18, 1996

Page 8

losses. Therefore, we recommend that the criteria for placing the employer in the adverse risk pool be strictly limited to workers' compensation activities and information. Employers may be cited for violation of regulations that do not impact workers' compensation losses.

Criteria number 12 states "Such other factors or criteria considered necessary by the Division to adequately assess risk or insure fairness and equity in the rate making system." We feel this Section is too broad. If this Section must remain, we recommend this particular criteria must have the approval of the Performance Council. However, we recommend this criteria be deleted.

SECTION 13.4.a.C(g)

This Section pertains to employers getting refunds. It states "Employers must collect all overpayments and duplicate payments directly from the health care provider. When the employer collects such overpayments and duplicate payments from a health care provider, then the employer shall notify the Division of such collections in the manner prescribed by the Division."

In some cases, medical refunds come from the Workers' Compensation Division. The reason for this is when a second injury life award is granted or a claim is rejected, the Workers' Compensation Division reimburses the self-insured employer for any payments made after the effective date of the decision. Therefore, this Rule needs to contain a provision for this activity.

SECTION 13.6.g

This Section pertains to self-insurance and the security required to be posted by self-insured employers. This Section states "In accordance with the provisions of subsection 7.2, the Division may develop a sliding scale based upon the employer's financial circumstances, to determine the amount of security required to become a self-insured." We recommend this be changed to state that the Division will develop a sliding scale approach. Further, we recommend this Section also add a sentence that says the sliding scale approach must be implemented by July 1, 1997. We know that some self-insured employers with good financial records are being requested to provide the full amount of security. However, we believe that when their financial record is reviewed they will not be required to post the full amount of security. That is why we recommend setting a date and implementing this no later than July 1, 1997.

SECTION 13.8

This Section pertains to maintaining self-insured status. In 13.8.a, it states "The renewal application shall be in the form prescribed by the Division and shall be accompanied by a current audited financial statement and a renewal processing fee of five hundred dollars (\$500)." Again, we do not feel that a self-insured employer should have to pay an annual renewal fee. This is done in other states but in other states, the employer does not pay any administrative fees. It seems quite unfair that self-insured employers are paying the Workers' Compensation Division millions of dollars on an annual basis but yet the

Mr. Randy Suter

Re: Series 9 rules

September 18, 1996

Page 9

Workers' Compensation Division is still requiring a \$500 self-insurance renewal fee. We believe the current amount of administrative fees are more than adequate to cover this activity.

SECTION 13.8.d

This Section states "Notwithstanding Section 13.6.b of this rule, in cases where the employer is permitted to remain self-insured, even though their security is less than the amount required, as determined by the Division, the Compensation Program Performance Council may approve a graduated premium tax to insure against the additional risk, as a determination under the provisions of 7.2 and 7.3. This increased premium tax applies to any self-insured employer who fails to maintain adequate security." As previously stated in our comments regarding Section 12.3.(7), we do not feel this Section should pertain to any employer who has agreed upon a plan to increase their security to the required level over a period of time. We again recommend this Section be changed to include this situation.

SECTION 13.9.a

The last sentence of this Section states "The notice of modification must include specific information as to the nature of the modification, including but not limited to, a copy of the executed contract causing the modification, and the names of other employers and/or businesses affected by the modification."

We recommend adding a sentence to say that the copy of the contract is only necessary if the change affects the liability. Section 13.10.d of these Rules already makes this statement. However, we believe it also needs to be added to this Section. Employers are not going to be willing to give the Workers' Compensation Division a copy of the sales contract unless the workers' compensation liability has been transferred. Therefore, we believe this Section needs to be changed.

SECTION 13.11.a

This Section states "At any time, the Division, in its discretion, may permit or require any self-insured employer to pay into the Fund an amount of money equal to the present value, as determined by the Division, of all unpaid but awarded claims liabilities for which the employer is liable." We believe that a sentence needs to be added to this Section which states that if this is required by the Division, it will have the Compensation Programs Performance Council's approval. As written, this Section is very broad and a self-insured employer could be required to pay the present value of all their outstanding liabilities for little or no reason. To add the Compensation Programs Performance Council's approval to this Section will reduce the risk of abuse of this power by the Division.

SECTION 13.13.c.B.

This Section is very confusing. The Section starts off by saying "If a self-insured employer does not subscribe to the second injury reserve of the surplus fund. . . ." If an employer does not subscribe to the second injury reserve, they do not pay any premium to this Fund.

Therefore, we believe that the word NOT should be removed. It will then say if a employer does subscribe to the second injury reserve of the surplus fund, they have to pay premium into that Fund. We recommend further review of this Section.

SECTION 14.7.a.B.

This Section pertains to the tax liability policy guidelines for receivable management. This part discusses those employers in the guaranteed cost plan and the fact that for those employers who pay \$500 or less in annual premium, they may pay their premium once a year. Section B states "Underpayment of estimated premium taxes by 25% or greater results in the application of interest and penalties." We believe this should say that it "may result in the application of interest and penalties." Employers may expand their business which increases their premium. Surely, the Division does not want to penalize employers for putting more people to work.

SECTION 14.7.b

Section 14 pertains to the new tax liability policy guidelines for receivables management. We believe this Section will be good for the Workers' Compensation Division collection of premiums from those employers who are considered to be a bad credit risk. However, as written, this Rule is too broad. Section 14.7.b states "In accordance with the provisions of subsection 14.6.d of this rule, employers who fall within the applicable tax liability limits of Table 85-9-B shall be required to pay premium taxes on a frequency less than quarterly so that the employer does not exceed preestablished tax liability limits." This Section pertains to all employers who participate in the West Virginia Workers' Compensation Division. Based on Table 85-9-B, any employer who has an annual premium of more than \$100,000 will be required to pay premium on a monthly basis. This includes self-insured employers and insured employers. To require financially sound companies to pay their premium on a monthly basis is unjust. We understand that this Section would be good for the Workers' Compensation Division because they would have the money on a more timely basis and will be able to make more interest. However, financially sound companies would lose the use of that money and the interest on that money. Therefore, we believe this Section needs to be changed so that companies that fall in category A on Table 85-9-A be eliminated from being required to pay their premium on a monthly basis. It is appropriate to protect the Fund from employers who may not have the resources to pay premium in a timely manner. It is inappropriate to use the protection provision for the purpose of increasing the Division's cash flow.

SECTION 14.7.c(E)

This Section talks about the payment terms for employers. Regardless of an employer's financial status, any employer that has \$100,000 or more in annual premium will be required to make accelerated deposits. We believe this should be required of only those companies that have a credit rating of B or C, which means they are moderate or high risk of bad debt. See comments on Section 14.7.b above.

Mr. Randy Suter

Re: Series 9 rules

September 18, 1996

Page 11

SECTION 15.4.b

This Section pertains to refunds of the premium tax deposit. It states, "Upon an employer's application for refund of the premium tax deposit, the Division shall determine whether a gain or loss has occurred in relation to the employer's account. The Division shall determine the following factors: total premium taxes paid, total claims paid and the cost of claims reserved. If the total premium taxes paid are less than the total of claims paid and the costs of claims reserved, the Division shall deny the request for refund and apply the deposit or applicable portion thereof to the employer's account. If the total claims paid and the costs of claims reserved are less than total premium taxes paid, then the deposit shall be returned to the employer."

The Workers' Compensation Division sets the premium for employers. If the employer pays all their workers' compensation premium in full and on time, the employer should be entitled to a refund of their remaining deposit amount when they cease doing business in West Virginia. If the Workers' Compensation Division fails to set the proper premium levels, the employer should not be penalized for that. If the Performance Council disagrees with this position, then this Section should state that this Section applies only to refunds requested after the effective date of these applications. We have refunds pending for several clients that are more than two years old and these should not be placed under this criteria on a retroactive basis. Frankly, we doubt there is any statutory authority for refusing to refund the deposit amount of an employer in good standing.

SECTION 17.3.a.A

Section 17 pertains to the sale, transfer, absorption, or merger of a business. This Section states "If the predecessor's experience modification factor is less than one then, if the new employer does not already have an experience modification factor for that same class, the new employer shall be assigned the base rate."

This Section ranks as one of the most arbitrary and unfair provisions contained in these proposed rules. The previous Section, 17.3.a. states "If the predecessor's experience modification factor is greater than one then, if the new employer does not already have an experience modification factor for that same class, the new employer shall assume the predecessor employer's experience modification factor for the payment of premium taxes until sufficient time has elapsed for the new employer's experience record to be combined with the experience record of the predecessor employer so as to calculate the new employer's own experience modification factor." What this is saying, is if the employer has a bad record, the purchaser will assume that bad record. However, if the employer has a good record, the purchaser will not get the good experience but rather they will be assigned the base rate. We believe this is neither fair nor equitable. We believe that a purchasing employer should be given the seller's premium rate regardless of whether that premium rate is good or bad. When employers negotiate the sale of a business, they expect to take on the premium rate that the seller is currently assigned. If an employer has a good record, they should be given that good experience premium rate. If the employer has bad experience, they should be given that bad experience premium rate. Therefore, we strongly recommend this Section be changed.

Mr. Randy Suter
Re: Series 9 rules
September 18, 1996
Page 12

SECTION 17.6

This Section pertains to a certificate of good standing to transfer a business or business assets. It states "If an employer subject to this section pays to the Division, prior to the execution of an agreement of sale or other transfer, a sum sufficient to retire all of the indebtedness that the employer would owe at the time of the execution, then the Division shall issue such a certificate to the employer that the employer's account is in good standing and that the assets may be sold or otherwise transferred without the attachment of the Division's lien."

We recently had such an instance with a self-insured employer. However, when we asked for a certificate of good standing, we were furnished a certificate of coverage. Until this recent event, we were not aware that there is a difference between a certificate of good standing and a certificate of coverage. If indeed there is a difference, we believe this Section should be clarified to state that the certificate of good standing is separate and distinct from the certificate of coverage that the employer may receive on a quarterly basis and the Division should describe the difference between the two documents.

Again, we appreciate the opportunity to be able to comment on these most important Rules. We ask that if you have any questions or comments pertaining to our questions and comments, that we be given an opportunity to provide explanation or clarification. If necessary, we would be willing to meet with you to discuss these comments in more detail. After the various public hearings are conducted, we may have additional comments to offer.

Sincerely,



Michael Idleman
Director, Risk Management
(304) 556-1116

cc: Mr. Ed Staats - Workers' Compensation Division
Mr. Ed Burdette - Workers' Compensation Division
Mr. Gene Bailey - Compensation Programs Performance Council
Mr. Thad Epps - Compensation Programs Performance Council
Mr. Chris Jarrett - Compensation Programs Performance Council
Mr. David Harris - Compensation Programs Performance Council

MAIN OFFICE:

P.O. BOX 386
PARSONS, WV 26287-0386
PHONE: 304-478-2500
FAX: 304-478-4204

HINCHCLIFF

LUMBER COMPANY

SALES OFFICE:

13477 PROSPECT ROAD
STRONGSVILLE, OHIO 44138
PHONE: 216-238-5200
FAX: 216-238-5202

September 27, 1996

Randall B. Suter, Counsel
Legal Services Division
P. O. Box 3922
Charleston, WV 25339-3922

Dear Mr. Suter

I attended the public hearing yesterday in Elkins on the proposed changes to the Workers' Compensation regulations, and I want to submit the following comments:

1. Why use industry base rates at all? Why not move towards individually tailored rates for each existing business based on their own claims and payment history, and just use industry base rates or average rates for new subscribers until they amass a few years of their own experience?
2. What will the qualifications be for field auditors? It is fine to have someone trained in accounting auditing financial records, but I wouldn't feel comfortable having an accountant walking through my plant doing an assessment of job classifications or a safety review. Auditors doing those tasks should have appropriate training in occupational employment and safety.
3. Try your best to help out the very small businesses. There are many, many very small businesses where one owner or one employee is responsible for ALL recordkeeping for all governmental agencies. This is an incredibly burdensome task. When designing your new reporting requirements, keep in mind the time that will be required to keep records and file reports. Try your best to align your reporting schedules with the requirements for the state tax department and the IRS, so that these people can set aside time to do all of their reporting at once and don't have to drag out their records time and time again to meet varying reporting deadlines. By the same token, many of these very small businesses are cash-poor. I don't know if it is a good idea to let them pay their premiums annually. It would be easy for them to accumulate more of a financial liability to you than they had cash to cover at the end of the year.
4. For many years before I took my current job I was self-employed as a potter. I was essentially a one-man operation, as are many artists/craftspeople, although I usually hired at least one part-time employee to help out. At one time I think I had a total of six employees, but these were all part-time. I always paid my workers' comp. premiums but it was a struggle and I didn't always pay on time. (I was one of those very small businesses that I mention above.) In all of the years I subscribed to the workers' comp. fund, I only had one claim: around \$80 dollars, I think.

SEP 30 PM 2:19
LEGAL DIVISION



NATIONAL WOODEN PALLET
& CONTAINER ASSOCIATION

I always felt it was very unfair that my tiny business with almost no claims had to pay under the "Pottery Manufacturing" rate, which was almost certainly based on the experience of large industrial plants such as Homer Laughlin China. When I repeatedly inquired about getting a rate reduction, I was repeatedly told that I didn't pay enough total premiums to be considered for a lower rate. A kind of catch-22! My point is that you should seriously consider setting up a separate industry class for artists and craftspeople who run basically home-based or cottage-industry type businesses. With the new emphasis on Tamarack, this will probably be a growing concern, even though the total number of employers who would fall into such a class would probably not be very large. You could consult with Tamarack and the Arts & Humanities section of the Division of Culture & History for input. You could also cooperate with them to get the word out to Tamarack's suppliers about workers' comp. requirements and employers' responsibilities.

In my current job I work for a pallet manufacturing plant currently with about 100 employees, and I have had many frustrations with workers' comp. over the past few years. I am very pleased to see all of the positive changes which have been taking place in the system over the past few years, and I applaud you for your efforts to make more improvements.

Sincerely,


Robert S. Mays
Comptroller

Frank Gates

The
Frank Gates
Service
Company

Corporate Headquarters:
5000 Bradenton Ave.
Dublin, Ohio
43017-3534

Mailing Address:
P.O. Box 16580
Columbus, Ohio
43216-6580

Telephone:
614-793-8000
Telefax:
614-793-5400



SUGGESTED CHANGES TO

Title 85-9-10. Group retrospective rating plan.

10.1. Description. The division shall offer a plan for workers' compensation coverage to groups of employers. The premium tax for this plan will be determined and adjusted periodically according to the group retrospective rating plan described herein.

10.2. Eligibility. In establishing a group for group rating purposes, the sponsoring group organization or individual employers in the group must satisfy all of the following requirements:

10.2.a. All of the employers within the group must be members of the sponsoring organization. The sponsoring organization must have been in existence for at least two years prior to the last date upon which the group's application for coverage is filed with the division.

10.2.b. The division shall require the organization to document its purpose by its charter, bylaws, or other evidence. The sponsoring organization shall have duly elected officers. So long as all of the other criteria of this rule are satisfied, a parent corporation may be a sponsoring organization and, if it qualifies under the criteria of this rule, a member of a group of its subsidiary corporations for group rating purposes.

10.2.c. The employers in the organization must be in the same classification code. A sponsoring organization may sponsor more than one group.

THERE NEEDS TO BE A BETTER DEFINITION OF SAME CLASSIFICATION CODE, ALLOWING FOR SIMILAR CODES ON A CASE BY CASE BASIS.

10.2.d. The group of employers must consist of at least two individual risk members and the aggregate workers' compensation premiums of the members are, as determined by the division, expected to exceed \$500,000 dollars during the coverage period.

THE \$500,000 DOLLAR MINIMUM NEEDS TO BE CHANGED. THE STATE OF WASHINGTON USE TO REQUIRE A \$200,000 MINIMUM AND RECENTLY REDUCED IT TO NO MINIMUM. THE STATE OF OHIO HAS A MINIMUM OF EITHER \$150,000 OR 100 PARTICIPANTS. ALLOWING FOR A CASE BY CASE APPROVAL.

10.2.e. The formation and operation of the group program in the organization must substantially improve accident prevention and claims handling for the employers in the group. The division shall require the group to document its plan or program for these purposes and have the plan or

REP-LEGAL DIVISION
96 OCT - 2 AM 10:55

division shall require the group to document its plan or program for these purposes and have the plan or program approved by the division. Groups reapplying annually for group coverage shall document and submit the results of prior programs.

10.2.f. Each employer seeking to enroll in a group for workers' compensation coverage must have active workers' compensation coverage according to the following standards:

A. Unless a dispute of the obligation has been lodged by the application deadline, the employer must be current on any and all payments, premiums, administrative costs, assessments, fines or monies otherwise due to any fund administered by the workers' compensation division, including amounts due for retrospective rating, at the time of the application deadline date;

B. The employer cannot be participating in a reinstatement agreement for payment of premiums or assessment obligations at the deadline for the application for group rating;

IF RESOLUTION TO THE DISPUTE HAS BEEN MUTUALLY AGREED UPON BY THE DIVISION AND THE EMPLOYER BUT NOT EXECUTED THE EMPLOYER MAY PARTICIPATE IN THE PROGRAM PROVIDED IT IS EXECUTED BY THE FIRST DAY OF THE COVERAGE PERIOD.

C. The employer cannot have cumulative delinquencies in excess of fifty-nine days within the eighteen months preceding the application deadline date for group rating;

D. The employer must have a tax liability rating of A or B as defined by section fourteen of this rule; and

E. The employer must be in an active status on the first day of the coverage period for group rating. An employer who becomes active and obtains coverage after the first day of the coverage period may not participate in group rating for that year.

10.2.g. All members of the group must have entered into a written agreement among themselves, which includes at least the following:

A. A statement setting forth their reasons for purchasing insurance under a group retrospective rating plan;

B. A statement attesting that all members have the same classification code;

C. A formula determining how any additional premium taxes due the division or any premium taxes returned by the division as a result of the operation of the group retrospective rating plan will be allocated to each member of the group;

D. An undertaking by each member to pay to the division its allocated share of any additional premium taxes and to allocate responsibility if any member fails to pay its allocated share when due, so that the group will pay, in full, any additional premium taxes owed the division; and

E. An undertaking to establish and maintain a safety committee of its members to assist all members in reducing the incidence of losses and controlling the severity of losses of the group.

EACH GROUP WILL SUBMIT TO THE DIVISION A COPY OF THEIR SAFETY PROGRAM AND AT THE ANNUAL RENEWAL EVIDENCE OF MEETINGS OF THE COMMITTEE AND DOCUMENTATION OF VISITS.

10.3. Group status. Each employer who is a member of a group shall be jointly and severally liable for the workers' compensation obligations of other members of that group. No employer may be a member of more than one group for the purpose of obtaining workers' compensation coverage. Applying for more than one group on a valid application for group rating will result in rejection of the employer from all groups for which the employer applied.

IN THE EVENT AN EMPLOYER APPLIES FOR MORE THAN ONE GROUP, THE DIVISION SHALL NOTIFY THE EMPLOYER THAT THEY HAVE 7 DAY TO PICK ONE OR THE OTHER.

10.4. Representation for a group retrospective rating plan.

10.4.a. A group that has been established and has been accepted by the division for the purpose of a group retrospective rating plan shall have no more than one permanent authorized representative for representation of the group and the individual employers of the group before the division in any and all risk related matters pertaining to participation in the workers' compensation fund.

10.4.b. The selection of an authorized representative must be made by submission of a completed form supplied by the division, and any change or termination of the authorized representative can be made only by a subsequent submission of the form. Only an officer of the group may sign such a form.

10.4.c. Notwithstanding the provisions of 10.4.a of this rule, an individual risk in a group may retain the services of an attorney or other authorized representative for claims-related matters, such as representation at claims hearings before the office of judges, through submission of the appropriate authorization for representation in such individual claim files. The division will recognize only one authorized representative for notice and appeal purposes.

IN SITUATIONS WHERE WORKERS' COMP PROGRAMS HAVE JOINT AND SEVERAL LIABILITY (SIGS), THE PARTICIPANTS ARE NOT ALLOWED TO PICK THEIR REPRESENTATIVE. BECAUSE OF THE JOINT AND SEVERAL THE INTEGRITY OF THE GROUP AS A WHOLE MUST BE MAINTAINED AND THERE IS NO ASSURANCE THAT THE REPRESENTATIVE THEY USE WILL HAVE THE GROUPS BEST INTEREST IN MIND WHEN SETTling A CLAIM. AS A RESULT THEY ARE REQUIRED TO PICK FROM AN APPROVED LIST PROVIDED BY ONE PERMANENT GROUP REPRESENTATIVE.

10.4.d. For an individual employer which has left a group, the individual employer may retain an authorized representative for both claims and risk matters.

EXCEPT FOR ANY OPEN CLAIMS THAT OCCURRED WHILE THE EMPLOYER WAS PARTICIPATING IN A PROGRAM, THESE OPEN CLAIMS WILL STILL IMPACT THE GROUP.

10.5. Application.

10.5.a. An application for a group retrospective rating plan shall be made in a form provided by the division and shall be completed in its entirety with all documentation attached as required by the division. The absence of pertinent information will result in the application being rejected. The application shall be signed by an officer of the organization to which the members of the group belong, and each individual employer in the group shall be identified in the application and shall individually sign a form provided by the division indicating a desire to be a part of the group for rating purposes and an acknowledgment of the criteria and rules for the group retrospective rating plan, as well as an acknowledgment by each employer of its joint and several liability for the workers' compensation obligations of other members of the group. The division may request of individual employers or the group additional information necessary including, but not limited to financial statements, safety and loss control inspection reports and claims reports, for the division to rule upon the application for group coverage. Failure or refusal of the group to provide the requested information on the forms or computer formats provided by the division shall be sufficient grounds for the division to reject the application and refuse the group's participation in the group retrospective rating plan. Individual employers who are not included on both the final group roster and the individual employer application by the application deadline will not be considered for the group plan for that coverage period. All rosters, computer formats or typewritten, must be submitted by the application deadline.

10.5.b. Application for group coverage shall be filed two full quarters prior to the beginning of the coverage period.

10.5.c. An application for group rating is applicable for only one coverage period. The group must reapply each period for group coverage. Continuation of a plan for subsequent periods is subject to timely filing of an application on a periodic basis and the meeting of eligibility requirements each period. Timely filing, in this instance, means filing ninety (90) days prior to the end of a coverage period. An individual employer member of a continuing group who initially satisfied the homogeneous requirement of this rule shall be disqualified from participation in the continuing group for failure to continue to satisfy such requirement.

IN WASHINGTON, ONCE THE COVERAGE PERIOD HAS BEGUN, THE STATE ALLOWS FOR QUARTERLY SUBMISSIONS AND ADDITIONS TO THE PROGRAM.

THE NINETY (90) DAYS SHOULD BE REDUCED TO A SHORTER PERIOD OF TIME, THE STATE OF WASHINGTON ALLOWS FOR FORTY-FIVE (45) DAYS. THERE IS TOO MUCH THAT CAN IMPACT THE GROUP IN THAT NINETY (90) DAYS PERIOD.

10.5.d. Once a group has applied for a group retrospective rating plan, the organization may not voluntarily terminate the application during the division's evaluation period. All changes to the original application must be filed on a division form provided for the application for the group retrospective rating plan and must be filed prior to the filing deadline. Any rescissions made must be completed in writing, signed by an officer of the organization to which the members of the group belong, and filed prior to the filing deadline. The group may make no changes in the application after the last day for filing the application. Any changes received by the division after the filing deadline will not be honored. The latest application form or rescission received by the division prior to the filing deadline will be used in determining the premium obligation.

10.5.e. In reviewing the group's application, if the division determines that individual employers in the group do not meet the eligibility requirements for group rating, the division will notify the individual employers and the group of this fact, and the group may continue in its application for group coverage without the disqualified employers, if the group still satisfies the minimum requirements for group rating as provided by this rule.

IF THE DIVISION DECIDED THAT AN EMPLOYER OR EMPLOYERS ARE NOT ELIGIBLE THE DIVISION SHOULD ALLOW THE GROUP 14 DAYS TO MAKE MODIFICATIONS TO OR RESCIND THE APPLICATION. AN EMPLOYER'S DENIAL MAY DRASTICALLY ALTER THE GROUPS OUTLOOK FOR SUCCESS.

10.6. Calculation of group retrospective premium tax.

10.6.a. Standard premium shall be calculated for the members of the group. Standard premium for purposes of the group retrospective rating plan shall mean the aggregate premium tax of the group calculated according to the terms of the individual employers' applicable policies.

10.6.b. Adjustment of standard premiums on a loss sensitive basis. Standard premiums calculated in 10.6.a shall be adjusted on the basis of actual incurred losses and rating values.

10.6.c. The compensation programs performance council shall approve any rating schedule in accordance with the determinations provisions of section seven of this rule.

10.6.d. Retrospective premium calculation. The retrospective premium tax equals the sum of the premiums for the individual policies of the employers who are members of the group. Such premiums equal the sum of 10.6.d.E. and 10.6.d.F, below. Determine the following:

A. Incurred subjects losses. In order to keep the expected total loss amount used in the premium computation within a predictable range, each loss used in computing the final adjusted premium is capped at an amount negotiated with the group's representative.

B. Incurred subject losses multiplied by the sum of those rating values shown on the schedule as applicable to incurred subject losses.

C. Standard premium multiplied by the sum of those rating values shown in the schedule as applicable to standard premium.

D. Other charges calculated according to rating values shown in the schedule or in other agreements between the individual group member and the division.

E.(a) The sum of 10.6.d.A, -B, -C and -D above, divided by the value in 10.6.d.E.(b) below.

(b) One minus the sum of the assessment factors shown in the schedule.

F. Premiums identified as "Non-Subject", after adjustment to reflect the increase or decrease in the basis thereof from the basis as estimated at the policy's inception.

10.6.e.A. Aggregate stop. If an aggregate stop amount is shown in the schedule, the division will not use more than such aggregate stop amount as the incurred subject losses in this formula for all policies to which this group rating plan applies, subject to 10.6.e.B.

B. If an aggregate stop limit is shown in the schedule, that is the maximum incurred subject loss the division will exclude from the formula for all policies which this group rating applies because of the application of 10.6.e.A.

10.7. Schedule of Adjustments

10.7.a. The division will calculate the first interim estimated eighteen (18) months after the plan's inception. The division will recalculate the interim estimated premium annually thereafter until all subject losses are settled or at an earlier time by agreement with the group when a final reconciliation and adjustments are computed.

THERE NEEDS TO BE A CAP ON HOW LONG A CLAIM EFFECTS THE GROUPS EXPERIENCE. IN THE STATE OF WASHINGTON A CLAIM EFFECTS THE GROUPS EXPERIENCE FOR ONLY TWO (2) YEARS WITH AN OPTION FOR A THIRD YEAR AT THE GROUPS DISCRETION. IN OHIO CLAIMS EFFECT GROUPS FOR FIVE (5) YEARS.

10.7.b. Payment of additional premium to the division, or the return of premium to the group, resulting from the calculation or recalculation of the adjusted premium, shall be according to the agreement between the division and the group.

WHEN DETERMINING ANY REFUND OR ASSESSMENT THE DIVISION SHOULD ONLY COUNT ONE HALF 1/2 OF THE COST OF A CLAIM (MEDICAL, COMP, AND RESERVES), IF THE CLAIM IS IN SUBROGATION AND IT IS EVIDENT THAT A SETTLEMENT IS PENDING.

10.8. Cancellation.

10.8.a. If, without the division's written consent, any policy subject to the group rating plan is canceled, and if an aggregate stop amount calculated as a function of the standard premium is shown in the schedule, then the division will change the way the aggregate stop amount will be calculated, as follows:

A. The standard premiums used by the division as the basis of the aggregate stop amount will be the sum of the annualized standard premiums for all policies in effect at any time during the term (or the terms) to which this plan applies, according to the division's audit or the basis thereof.

10.8.b. The division cancels any policy subject to group rating, the standard premium for the canceled policy will be the pro-rata share of the policy's annual premiums for the period of coverage, subject to adjustments on the basis of the division's audit or reasonable estimate of the actual premium basis during that period.

APPALACHIAN OH-9, INC.

(304) 325-362

MERCER HEALTH CENTER • P.O. BOX 6189 • BLUEFIELD, WV 24701

(304) 425-951

October 7, 1996

Bureau of Employment Programs
Workers Compensation Division
Randall B. Suter, Counsel
Legal Services Division
P. O. Box 3922
Charleston, WV 25339-3922

Reference Title: Exempt From Legislative Review
88 C.S. R. 9 "Risk Management"

Dear Mr. Suter:

The plan overall shows great improvements, however, I have the following concerns and comments.

The past 18 months have been extremely difficult for employers to call and discuss the accounts with knowledgeable staff members and get a prompt response. How will this proposal change this? Due to ongoing problems, employers may be deemed at fault which according to this policy will not allow participation in the "deductible plan".

The plan calls for an employer to have more than one classification only if the employee is assigned to a separate permanent site. For example, Page 7, a clerical person or administrative person should have the same risk factor anywhere in the organization. Page 8, Section 5.3 Does a foreign investor doing business in West Virginia pay the same Workers Compensation rates as a state employer?

Page 55, Section 14.2c - Reference EMS organizations - if other agencies are in the Service area capable of performing the services for a fee without county and state support we feel this should not be a factor.

Page 51 - Electronic Data transmission 14.1 f - Any exceptions for adverse weather conditions? The IRS does make

October 7, 1996

Page 2

these allowances or in the case of health care providers, when the State agencies are slow paying, this will be a hardship on hospitals, clinics, etc.

Sincerely,



N. Allen Dyer, M.D.. M.P.H.
Executive Director

**CNG Transmission
Corporation**

445 West Main Street
PO Box 2450
Clarksburg WV 26302-2450
(304) 623-8000

A **CNG** COMPANY

October 4, 1996

BEP-LEGAL DIVISION
96 OCT - 8 AM 10:13

Mr. Randy Suter
West Virginia Workers' Compensation Div.
Legal Services Division
4700 MacCorkle Avenue, SE
Charleston, West Virginia 25304

Dear Mr. Suter:

This correspondence contains CNG Transmission Corporation's comments on the Title 85, Series 9, Rules and Regulations entitled, "RISK MANAGEMENT". CNG Transmission Corporation relies upon the expertise of its outside administrator, Employers Service Corporation, to provide informed comment on the majority of the provisions of these regulations. However, there are several areas that are of particular concern to CNG Transmission.

Section 3.11 - This Section provides a definition of "delinquent." CNG Transmission Corporation believes that the word "proper" or "correct" should be inserted between the words "honor" and "pay." Employers should not be forced to honor pay orders which clearly were issued mistakenly or which contain obvious mistakes. Nor should employers be penalized for attempting to avoid overpayments.

Section 6.14 - This Section states, "The Division has the authority to assign at any time an employer to any workers' compensation insurance plan offered under the provisions of this rule." CNG Transmission Corporation believes that this provision could be applied in an unfair manner and could unduly penalize those employers that do not present any adverse risk. Such assignments should be made for serious cause only and also should be subject to due process notice and hearing requirements. At the hearing on the proposed assignment, the Division should have the burden to prove by substantial evidence on the record as a whole that there is a serious cause for its proposed assignment.

Section 12.3 - Criteria Number 8 states, "Whether the employer has failed to make a payment or payments to a medical provider or the claimant, as required by the

October 7, 1996

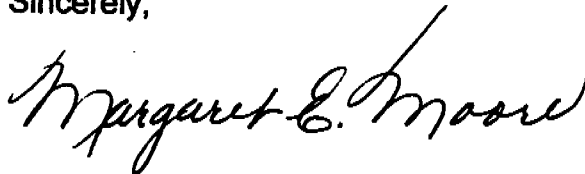
applicable provisions of the West Virginia Code or rules promulgated thereto." As discussed in its comment to Section 3.11 contained herein, it is CNG Transmission Corporation's opinion that employers should be responsible only for those pay orders or medical bills which are correct and which do not contain mistakes. In order for any such nonpayment to be a valid criteria regarding the adverse risk plan, the matter should be investigated and the employer permitted to explain its conduct.

Section 12.3 - Criteria Number 10 states, "Whether the employer has been cited for failure to comply with any applicable federal or state safety laws or regulations." As you are aware, many federal and state safety laws and regulations address record keeping and reporting obligations. Many of these requirements have little or no impact upon an employer's Workers' Compensation losses, nor do they impact accident prevention. Accordingly, CNG Transmission Corporation believes that this Criteria should either be deleted in its entirety or be narrowed in scope.

Section 12.3 - Criteria Number 12 states, "Such other factors or criteria considered necessary by the Division to adequately address risk or insure fairness and equity in the rate making system." In CNG Transmission's opinion, the wording of this Criteria is quite broad, and its scope is very vague, and, therefore, it does not provide adequate notice to employers of the intent of the Division.

CNG Transmission Corporation appreciates the opportunity to comment on these proposed regulations.

Sincerely,



Margaret E. Moore,
Manager, Employee Benefits

October 7, 1996

BEP-LEGAL DIVISION
96 OCT - 8 AM 10:13

Mr. Randy Suter
Legal Division
Workers' Compensation Division
P.O. Box 3922
Charleston, WV 25339-3922

RE: Series 9 Rules

Dear Randy:

This letter is to provide you our comments on the Title 85, Series 9, Rules and Regulations entitled "Risk Management". First, we would like acknowledge the Workers' Compensation Divisions efforts in these Rules.

We have reviewed these Rules and offer the following comments and concerns:

- 10.2.c. This section requires one code classification, but does not say what type of code. The division will determine the classification, but we cannot tell whether this by WC or SIC code. Also, a sponsoring organization may sponsor more than one group. This would require a separate group for each classification, such as all food stores in a group, all feed stores in a group, all fast food restaurants in a group, and other. This does not appear to be practical.
- 10.2.d. This section requires aggregate premiums to exceed \$500,000 but does not indicate whether this is annualized or prorated. We feel this creates problems.
- 10.2.e. According to this section, the group must prove that the program will "substantially improve accident prevention and claims handling...". We do not see how this goal can be achieved, when this plan is nothing more than a categorization of employers within a group.
- 10.2.f. This section requires members to have coverage before they can get into the group and would appear to eliminate any new business from entering the group.
- 10.2.f.E. This paragraph appears to limit participation to a single annual sign-up date. It would not allow anyone to join the group in the middle of the year.
- 11.1.a. This section allows the division to assign an employer to an individual retro plan. This appears to be almost the same as forced self-insurance.

In reviewing this, we feel there is little incentive for any employer with a premium of over \$25,000 to join a group retro plan. Section 10.2.e. provides that the groups must maintain a safety committee, in 10.3. provides for joint and several liability for the members of the group. Consequently, there is no advantage to belonging to this group. Nothing would be improved and all of your gains could be used up by the other members of the group.

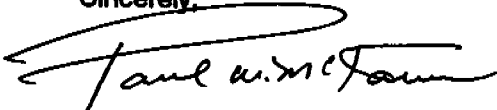
Suter
Workers' Compensation
Page 2

Given all of the circumstances, this does not appear to be a plan which could provide any significant improvement to the members of a group. The division already allows members to be self-insured, and we see very little advantage for group coverage under these circumstances. We feel that no significant in roads can be made in the reduction of Worker's Compensation expense, as long as the state monopolizes Worker's Compensation. For there to be any true reduction in claim handling or loss control, it must be privatized.

Providing a state fund may be a benefit to employers in West Virginia, but should be done on a voluntary basis. "Fund States" came into being when insurance was prohibitively expensive or the carriers simply withdrew from selling coverage and there was no other liable alternative. However, if the state allows employers to be "self-insured," they should allow for true self-insurance. The employers could pay their claims or have a third party administrative pay their claims as well as their medical expenses and cost. This could simply be reported to the state. By doing this, the most competitive pricing could be had by employers. If the state was able to operate more efficiently than private industry, they would have that opportunity. On the other hand, an employer may be able to self-insure and self-administer, or self insure an out source claims handling and a lot less expense than going through the state agency.

In order for the group "retro" plan to work, the state needs to release the reins on the claims. This plan simply creates come new rating systems and provides no real benefit to the groups. This would not make a significant difference in the cost of the insurance and would create "joint and several liability" on behalf of the group. While "joint and several liability" is a part of group self-insurance funds or pools in other states that liability is assumed with the opportunity to administer the claim and reduce the cost.

Sincerely,

A handwritten signature in cursive script, appearing to read "Paul W. McKown".

Paul W. McKown,
President WVRA

October 7, 1996

REP-LEGAL DIVISION
96 OCT -8 AM 10:14

Randall B. Suter, Counsel
Legal Services Division
Post Office Box 3922
Charleston, West Virginia 25339-3922

**Re: Bureau of Employment Programs
Workers' Compensation Division/TITLE NUMBER 85**

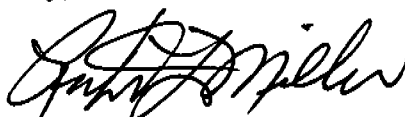
Dear Mr. Suter:

This purpose of this letter is to serve as written comments on the above reference:

- Written comments from Employers Services and The Frank Gates Company are supported by West Virginia Health Services, a subsidiary of the West Virginia Hospital Association.
- With this change, there will be several third party administrators offering to provide services for the new programs. It is recommended that these new administrators be endorsed/approved or certified by the State to administer the plans. Criteria for endorsement could be based on tenure of business in West Virginia, company assets, number of covered lives currently being serviced, recommendations from other states or businesses etc.

If you have any questions, please let me know.

Sincerely,



Richard L. Miller
Vice President/Chief Operating Officer

RLM/dsm



Contractors Association of West Virginia

2114 Kanawha Boulevard, E. • Charleston, West Virginia 25311 • (304) 342-1166 FAX (304) 342-1874

Officers

*President

James E. Brown

*Senior Vice President

Ronnie E. Spradling

*Vice President

Rodney W. Clay

Secretary

Jack Lively

Treasurer

R. M. Brewer

*Immediate Past President

Paul L. Turman

Directors

James W. Dalley II

Ronald B. Snyder

David S. Taylor

AGC National Directors

Samuel M. Bowling

William J. Harman

Robert O. Orders

Winfield H. Strock

AGC National Associate

Director

D. Stephen Walker

ARTBA National Director

James Ahern

Chairman, Flexible

Pavements Council

Dan Cooperider

NUCA National Directors

Ronnie E. Spradling

W. L. Thaxton

Chairman, Building Division

Gary D. Young

Chairman, Highway/Heavy

Division

J. Steven Cvechko

Chairman, Utilities Division

Richard Smiles

*Chairman, Associate

Division

Charles Haden III

Vice Chairman, Associate

Division

Michael Skeens

Past President Directors

James Ahern

Samuel M. Bowling

C. Robert Harman

William J. Harman

C. Harve Hollifield

James D. Hughes

Art King

James Mattingly

J. W. McDavid

Charles R. Neighborgall III

Robert B. Orders

Robert O. Orders

Robert O. Orders, Jr.

Winfield H. Strock

Robert E. Troy

William C. Turman

Staff

Executive Director

Michael L. Clowser

Assistant Executive Director

Thomas A. Geener

Administrator

Jerry Zoe Holden

Executive Director

Flexible Pavements Council

Patrick M. Parsons

Director of Construction

Information Services

Betty R. Walls

Staff Assistant

Mary Lou Atkins

*Executive Committee

October 7, 1996

Mr. Randall B. Suter, Counsel
Legal Services Division
Workers' Compensation Division
P. O. Box 3922
Charleston, West Virginia 25339-3922

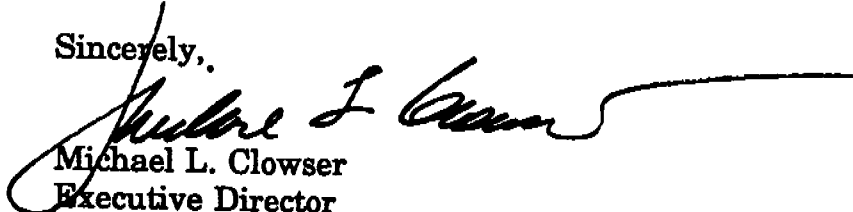
Dear Mr. Suter:

The Workers' and Unemployment Compensation Committee of the Contractors Association of West Virginia has reviewed Title 85, Series 9, Rules and Regulations for Risk Management.

It is obvious the Performance Council and its staff have spent much time and forethought in putting these rules together. Everyone is to be congratulated for their effort.

The CAWV is pleased to offer the enclosed comments regarding the rules. We appreciate the opportunity to do so, and please call me at 342-1166 should you have any questions or need further clarification.

Sincerely,


Michael L. Clowser
Executive Director

enclosure

BEP-LEGAL DIVISION
96 OCT - 8 AM 10: 14



CONTRACTORS ASSOCIATION OF WEST VIRGINIA

SUGGESTED CHANGES TO TITLE 85, SERIES 9 RISK MANAGEMENT OCTOBER 8, 1996

SECTION 4.7

This Section pertains to misclassifications and reclassifications. To summarize this complete Section, this Rule states that if the Workers' Compensation Division discovers that an employer has been placed in a lower premium rated classification and, as a result, has not paid at the proper premium level, the Workers' Compensation Division can go back to when the new operations began in order to charge the employer the additional premium. However, this rule does not allow an employer to go back under the same terms if the Workers' Compensation Division has collected excessive premium. The rule currently states that if an employer discovers that they are in a classification in which they are overpaying their premium, their classification is changed on a prospective basis only, unless the Division has erred in some way. We do not consider this Section to be fair and equitable. Therefore, we recommend that both the Workers' Compensation Division and the employer be able to go back five years in order to correct these type of classification questions. We feel this would be much fairer than the current rule contemplates.

SECTION 6.1.a.B

This Section pertains to independent contractors and the criteria the Division will use to determine whether an individual is an independent contractor or an employee. This Section states "Such individual has not received any form of training either by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods."

Many companies require their contractors to undergo safety training before allowing the contractor's employees to work on their premises. By listing this as one of the criteria, we believe the Division could discourage safety training which could increase injuries. Therefore, we recommend this language be deleted.

SECTION 7.4.c

This Section pertains to the experience period for the Workers' Compensation Rating Plan. This Section states that "The experience period used to determine experience modification factors shall be the three fiscal years prior to the fiscal year during which the annual rate calculations are made."

During public hearings held on the Series 9 Rule, several employer representatives made comments that because the Workers' Compensation Division was only going to use dates of injuries that occurred in the first three out of the last four completed fiscal years, that employers would not have any incentive to continue to manage workers' compensation claims prior to the experience period. We believe that with these regulations, the same stance will be taken by employers. We understand that the Workers' Compensation Division is going to include the deficit in the premium assessments. However, we still believe that employers will not manage claims prior to the experience period because there is no direct incentive to do so. If the proposed rating system were in effect today, employers would have no incentive to defend claims that have a date of injury of June 30, 1992 or before. If the Workers' Compensation Division would, in some way, include a prior loss adjustment expense which would directly effect an employer's premium rate, we feel this can be overcome. If employers do not manage their workers' compensation cases prior to the experience period, we believe the liability on the Workers' Compensation Division will grow, resulting in higher premiums. We also believe that the Workers' Compensation Division may not be able to manage these claims effectively. Its role has always been to act as an independent third party and not as a protector of the monies held by the Workers' Compensation Fund. Therefore, our concern in this area remains that this is a very serious problem that has the potential to undermine the fiscal solvency of the Fund.

SECTION 10.2.c

This Section requires that only one risk classification is permitted per policy account. For the construction industry, there are a number of classifications. It may be difficult to get enough contractors in one category to form a group plan. The Performance Council may want to consider grouping classifications that are somewhat similar in nature.

SECTION 10.2.d

This Section states that a group must have \$500,000 in aggregate premiums during the coverage period. The State of Ohio has a minimum of either \$150,000 or 100 participants. West Virginia should consider a \$150,000 to threshold.

SECTION 12.3

This Section deals with the adverse risk plan. We have a few questions and concerns about the criteria. Criteria number 5 states "Whether the employer has failed to maintain the proper level of premium tax deposit." We believe this criteria should be eliminated because the failure to maintain the proper level of premium tax deposit causes the employer to be delinquent and possibly in default. Default is already covered by criteria number 4. The failure to maintain the proper level of premium tax deposit could be a one-time error made by the employer. In addition, criteria number 6 already covers this problem because it mentions being delinquent more than two times in any calendar year. Therefore, we feel criteria number 5 should be deleted.

Criteria number 10 states "Whether the employer has been cited for failure to comply with any applicable federal or state safety laws or regulations." We believe this section should be deleted. We believe that Workers' Compensation Division activity should be the only criteria considered in this Rule. We do not believe the Workers' Compensation Division has the experience on staff to interpret other organization's safety laws or regulations. For instance an employer can be cited for record keeping errors that have no relationship to losses. Therefore, we recommend that the criteria for placing the employer in the adverse risk pool be strictly limited to workers; compensation activities and information. Employers may be cited for violation of regulations that do not impact workers' compensation losses.

SECTION 14.7.a.B.

This Section pertains to the tax liability policy guidelines for receivable management. This part discusses those employers in the guaranteed cost plan and the fact that for those employers who pay \$500 or less in annual premium, they may pay their premium once a year. Section B states "Underpayment of estimated premium taxes by 25% or greater results in the application of interest and penalties." We believe this should say that it "may result in the application of interest and

penalties." Employers may expand their business which increases their premium. We are sure the Division does not want to penalize employers for putting more people to work.

SECTION 17.3.a.A

Section 17 pertains to the sale, transfer, absorption, or merger of a business. This Section states "If the predecessor's experience modification factor is less than one then, if the new employer does not already have an experience modification factor for that same class, the new employer shall be assigned the base rate."

This Section needs to be reviewed for fairness. The previous Section, 17.3.a. states "If the predecessor's experience modification factor is greater than one then, if the new employer does not already have an experience modification factor for that same class, the new employer shall assume the predecessor employer's modification factor for the payment of premium taxes until sufficient time has elapsed for the new employer's experience record to be combined with the experience record of the predecessor employer so as to calculate the new employer's own experience modification factor." What this is saying, is if the employer has a bad record, the purchaser will assume that bad record. However, if the employer has a good record, the purchaser will not get the good experience but rather they will be assigned the base rate. We believe this is neither fair nor equitable. We believe that a purchasing employer should be given the seller's premium rate regardless of whether that premium rate is good or bad. When employers negotiate the sale of a business, they expect to take on the premium rate that the seller is currently assigned. If an employer has a good record, they should be given that good experience premium rate. If the employer has bad experience, they should be given that bad experience premium rate. Therefore, we recommend this Section be changed.

AFFILIATED CONSTRUCTION TRADES FOUNDATION



STEVE WHITE
Director

523 Central Ave.
Charleston, WV 25302

Phone: (304) 345-7570
Fax: (304) 345-7649

PARTICIPATING LOCAL UNIONS:

October 8, 1996

BOILERMAKERS
LU 667, Winfield

BRICKLAYERS
LU 5, Huntington
LU 9, Charleston
LU 15, Fairmont

CARPENTERS
LU 128, St. Albans
LU 302, Huntington
LU 476, Clarksburg
LU 604, Morgantown
LU 899, Parkersburg
LU 1207, Charleston

IRON WORKERS
LU 301, Charleston
LU 769, Ashland, KY

LABORERS
LU 379, Morgantown
LU 453, Beckley
LU 543, Huntington
LU 984, Clarksburg
LU 1085, Parkersburg
LU 1149, Wheeling
LU 1353, Charleston

MILLWRIGHTS
LU 1755, Parkersburg

OPERATING ENGINEERS
LU 132, Charleston

PAINTERS
LU 1144, Parkersburg

**PLASTERERS &
CEMENT MASONS**
LU 181, Parkersburg
LU 711, Morgantown
LU 887, Charleston

PLUMBERS & FITTERS
LU 83, Wheeling
LU 565, Parkersburg
LU 625, Charleston

ROOFERS
LU 185, Charleston

SHEET METAL WORKERS
LU 33, Charleston
LU 33, Parkersburg

TEAMSTERS
LU 175, Charleston
LU 505, Huntington
LU 789, Fairmont

Randall B. Suter, Counsel
Legal Services Division
P O Box 3922
Charleston, WV 25339-3922

Dear Mr. Suter:

I offer the following comments on proposed Risk Management Rule, 85 C.S.R. 9. The ACT Foundation represents over 10,000 construction workers from West Virginia. We are very concerned about the disadvantage high wage employers have in the West Virginia construction market place.

Workers compensation rates based on wages alone translate to fewer job opportunities for the construction workers we represent. Out-of-state companies have an unfair advantage in bidding with low wage, low workers compensation cost, competition.

We welcome new risk management rules with the hope that safety and cost will be the determining factor of workers compensation rates rather than wages. We believe it is of utmost importance to test the concepts of risk management and rate making allowed under this rule.

Because the impact of these rules can be very complicated and far reaching we suggest a number of test programs be encouraged. These test programs should be carefully controlled to test the concepts of risk management and rate making and should represent a variety of industries and employer sizes.

Second, we have seen an increase of third party administrators and anticipate even more under this rule. The time has come for these third party administrators to be licensed and regulated by the state. Workers need assurance that administration of group plans is handled by qualified parties.

Third, we would like to see more enforcement mechanisms in place to allow the fund to stop cheaters. We feel that in many instances accidents are going unreported, employers are paying hospital bills directly, and the long term effects from on the job accidents are not properly reflected in the employer rates. This cost shifting is raising the rates of safe employers and must be stopped. Employers must be required to report all accidents even if no claim is made.

EP-LEGAL-DIV

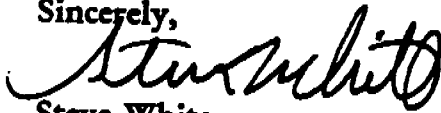
1-12 30 123 30



Finally, we believe that if this rule is to be successful then the Fund must have the resources to get qualified people to administer the risk management program. We feel the intent of this rule is to improve the workers compensation system. However, without qualified people in place the opposite will happen.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Steve White".

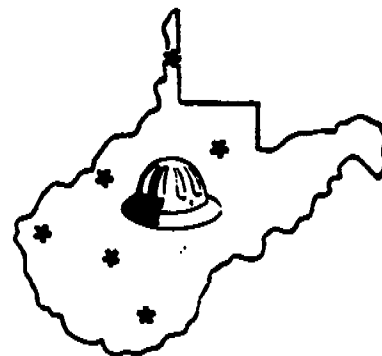
Steve White

EP-LEGAL-DIV

12:30

WEST VIRGINIA CONSTRUCTION COUNCIL

One Monongalia St. • Charleston, WV 25302 • (304) 342-7141



October 7, 1996

Andy Richardson, Commissioner
Bureau of Employment Programs
Workers' Compensation Division
4700 MacCorkle Avenue, SE
Charleston, WV 25304-1964

Dear Commissioner Richardson:

Please accept these comments on the proposed Risk Management rule 85 CSR 9, on behalf of the West Virginia Construction Council which represents over 1100 contractors and construction related firms in West Virginia.

Our member organizations are extremely interested in controlling costs by improving safety on the job site. We have invested heavily into safety training and drug testing programs. We are proud of our results on the job but are disappointed in the lack of reflection this success has on our workers compensation rates.

We believe a properly administered risk management program will be a positive step forward for West Virginia workers compensation provided the following steps are taken. First, we believe the fund must have qualified personnel in place to administer the risk management program. The level of complexity and potential for problems is great and we must make sure skilled and competent people are in place at workers compensation.

Second, we suggest a small number of carefully controlled pilot programs be authorized and encouraged to test the proposals of risk management and rate making. Again, we believe the fund is moving in the right direction but are concerned that we face equally disastrous results if we move too quickly into a new area.

Finally, we can see that third party administrators will play an increasing role in the administration of worker compensation programs. The time has come for some sort of regulating system to insure these third party administrators are qualified.

Thank you for the opportunity to comment.

Sincerely,


Jim Cerra, President

Workers' Compensation Office of Judges
Post Office Box 2233
Charleston, West Virginia 25328-2233

Gaston Caperton
Governor
Robert J. Smith
Chief Administrative Law Judge



October 8, 1996.

Randall B. Suter, Esquire
Legal Services Division
Post Office Box 3922
Charleston, W.Va. 25339-3922

RE: Comment - 85 C.S.R. 9

Dear Mr. Suter:

I offer the following comments in regard to the above Rule.

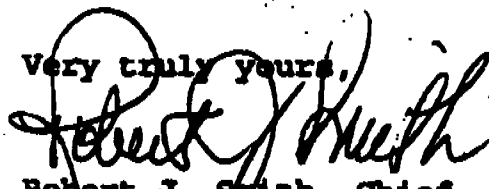
1. Section 10.4.c appears to permit non-attorney representatives to take part in proceedings before the Office of Judges. If such is intended, it is my belief it is beyond the jurisdiction of the Division. Moreover, the Supreme Court of Appeals has defined the practice of law to include handling administrative matters and has issued written opinions dealing with the unauthorized practice of law in Workers' Compensation matters. The Supreme Court opinions clearly preclude non-attorneys from representing parties before the Office of Judges. If the Rule is not intended to have the reach that it appears to have, I believe a simple alteration of the Rule would be possible. I would suggest that the phrase "such as representation at claims hearings before the Office of Judges" be deleted and the phrase "before the Division" be inserted after the word matters.

2. My understanding is that the persons necessary to implement the provisions of the this Rule have not yet been hired or trained. I would urge great caution in implementing this Rule before those individuals are hired and/or trained. I believe it would be extremely deleterious to the excellent concepts that are contained in the Rule for implementation to occur prior to the time that the Division has the existing capability to deal with the matters that are raised by the Rule. The Rule is an enormous undertaking and great care should be taken to make certain that the Rule is appropriately and properly implemented.

Page -2-

3. My reading of the Rule, particularly the group retrospective rating plan provisions, and my discussion with other persons who have an interest in the Rule and who have reviewed it in detail, causes me to believe that there will be an increase in claims litigation as a consequence of the Rule. It does not appear in the fiscal note that the resources necessary for that increased case load have been taken into account. I suggest another look be taken at this matter and an analysis undertaken to determine the impact on claims litigation.

Very truly yours,



Robert J. Smith, Chief
Administrative Law Judge

RJS:tsr

rjs10.1

October 7, 1996

Randall B. Suter, Esq.
Legal Services Division
Bureau of Employment Programs
Post Office Box 3922
Charleston, West Virginia 25339-3922



RE: Proposed 85 C. S. R. 9, Risk Management

Dear Mr. Suter:

On behalf of GatesMcDonald's clients in West Virginia, I would like to offer the following comments to the Compensation Programs Performance Council regarding the above proposed exempt legislative rule:

§85-9-4.6 (page 6) Auditing; classifications; and inspections, Classifications - We find the second sentence of this section to be somewhat vague and would urge the Council to further clarify the term "consistent with the risk being assessed." This phrase would seem to allow the Division to simply look for the employee who performs the highest risk job within the risk and assign this classification to the entire risk, ignoring the general nature of the employer's operation. Potential new employers need to be able to assess their workers' compensation costs in advance when evaluating West Virginia as a place to conduct business. Further clarification is required to this section which would make classification decisions less discretionary on the Division's part.

§85-9-9.6 (page 23) Deductibles, Security and bond - We would encourage the Council to include language which would require that the Division use the least burdensome method of posting security or bond appropriate for each employer. The administrative expenses involved with the application for bonding will unfairly prevent many small businesses from participating in this program. Consideration could be given to requiring that a participating small employer's premium deposit be based on the undiscounted premium tax rate in lieu of posting a separate security or bond.

§85-9-10.2.c (page 26) Group retrospective rating plan, Eligibility - We would encourage the Council to alter the language in this section to provide for broad industry groupings. These groupings would allow employers in a number of different classifications with similar risk levels to form a group. We believe that it will be very difficult to develop stable, long-term groups if the definition of homogeneity is limited to employers with the same classification code. Several other monopolistic states, Ohio and Washington among them, use such broad industry groupings for group formation.

§85-9-10.2.d (page 26) Group retrospective rating plan, Eligibility - We would ask that the minimum aggregate premium tax required for group formation be set considerably lower than \$500,000. It is our belief that very few groups will be possible if this requirement is not adjusted. Ohio requires \$100,000 in aggregate premium for group formation and Washington has no minimum premium aggregate requirements. It should be noted that both of these states have considerably larger employer bases than West Virginia.

We would appreciate the Council's careful consideration of these concerns. We commend both the Council and the Division staff for the sound risk management focus they have adopted throughout this proposed rule.

Sincerely,

A handwritten signature in cursive script that reads "David A. Slater".

David A. Slater
Regional Manager

das/mww

Acordia of West Virginia
One Hillcrest Drive, East
P.O. Box 3741
Charleston, West Virginia 25337-3741
(304) 347-8400
Fax (304) 347-8437

Acordia.

October 8, 1996

Mr. Randall B. Suter, Esquire
Worker' Compensation Division
Bureau of Employment Programs
4700 MacCorkle Avenue, S.W.
Charleston, WV 25304

RE: Proposed "Risk Management" Rules
Title 85, Series 9

Dear Randy,

Attached are the comments of Acordia on the proposed "Risk Management" rules, Title 85, Series 9. I have also enclosed a disk with the comments on Micro-soft word, per your request. The file name is COMMENTS.MC.

If there are any questions regarding my comments, please call me at 347-8423.

Sincerely,



Mike Cavender
Vice President
/sl

66:3 Hd 8-13096
EPP-LEGAL DIVISION

**Acordia of West Virginia
Comment on Proposed Legislative Rules
Title 85, Series 9, Risk Management**

Date: October 8, 1996

Acordia commends the efforts of the Division to consolidate the various rules and policies that now constitute the documentation of matters pertaining to coverage and premiums. If done properly, the rules should simplify and clarify the handling and resolution of these matters. The addition of policy options could also be of great value to our system. We feel, however, that these rules are weakened by ambiguity and overly broad language in many sections. Precision of intent and application should be a primary purpose to lessen the number of situations that are open to interpretation and uneven application.

Great care should be taken to consider the probability that at some future point, those administering these rules will not be familiar with their intent. Application of these rules as written, in such a manner that they do significant harm to our business environment is a definite possibility.

Our specific comments:

85-9-3 Definitions

3.11 The unqualified inclusion of not honoring payorders as criteria to designate an account as delinquent is overly broad. The Division often issues payorders that contain errors in duration covered, amount and other areas. The section should be amended and narrow this criteria to cases in which the employer has shown a pattern of failure to honor payorders without proper cause.

96 OCT 8 - 3 PM 3:39

BEP-LEGAL DIVISION

85-9-4. Auditing: classifications and inspections.

4.6.a. The language used to define classification assignment should be clarified. We would suggest language that stipulates assignment of the classification which would yield the highest base premium when applied to payroll. In other words, if an employer has \$1000 in payroll in a class with a base rate of 10.00 and \$3,000 in a class with a base rate of 5.00, the 5.00 rate classification would be applicable since it would generate \$150 versus \$100. Language to this effect would be less ambiguous than the terminology used and should yield more reliable class statistics in future years.

4.7.c. Allowance of Division use of overpaid premium, which was the result of Division error or inefficiency, is inappropriate. Refund of these overpayments should be immediate, with other remedies pursued to resolve security shortages.

85-9-7. Ratemaking

7.1.a. The inclusion of "board, rent, housing, lodging and other goods and services" in the exposure base presents many problems, in our opinion. If a benefit provided to an employee is not taxable, it should not be considered as such for workers' compensation purposes. Will a company car or 401K company contributions be considered as gross wages? Are the various items mentioned to be considered in establishing the benefit rate of injured employees? Fairness, enforcement and common sense should all be considered in this definition. The definition should be objective, and in its current form it allows for subjective analysis and the confusion and inconsistency that inevitably follow.

7.4.d. A move to incurred versus paid losses is one that is long overdue, in our opinion. We feel that the rule should stipulate that this process be used 100% from the effective date of the rule forward. There should be no opportunity to mix incurred and paid losses.

In addition, since there is the opportunity for a subscribing employer to remove costs for vocational rehabilitation from the division via an authorized employer managed vocational rehabilitation plan, a reduction in the reserve for employers with these plans should be defined. At the least, the reduction should equal the cost factor of rehabilitation services used in the establishment of case reserves. In our opinion, it would be more fair to reduce reserves by a factor that is demonstrable under a particular plan.

85-9-8. Guaranteed cost plan

8.2. The Division should be restricted in assignment of employers to the adverse risk plan only. All other plans should be available to an employer upon application and Division approval. In a monopolistic environment, dictating a move from guaranteed cost is unfair and leaves open the possibility of assignment to a plan which does not fit well with company goals, abilities and resources.

We also feel that the title of this plan should be changed, since it is not truly a guaranteed cost plan. If an employer opts to self-insure, these rules require a pay back to the Division of charges paid over premiums collected. At the same time, these rules fail to recognize a gain to the fund in terms of a refund of premiums paid over charges paid. At the very last, a gain to the fund should be recognized in a reduction of required surety or buy-out if an account self-insures.

85-9.-9. Deductibles

9.7.d. Dependent on the variable to be determined under 9.7.a., it may be more attractive to employers to utilize a deductible that is not included in modification factor calculation. The rules should leave this as a plan design option to allow a more varied product within this policy type.

85-9-11. Individual retrospective rating plan

11.1.a. The Division should not be allowed to assign an employer to this plan. With the availability of the adverse risk plan and the guaranteed cost plan, the Division has the means to place accounts to cover risk, and employers are not exposed to unexpected expense as they may be under a retro.

85-9-12. Assigned risk plan

12.3 The placement criteria should be better defined. As currently written, many of the matters to be considered are open to interpretation and, therefore, inconsistency of application. All criteria should be objective and the rules should contain the complete test for assignment.

The inclusion of self-insureds in this section is, in our opinion, inappropriate. Although the use of the traditional "assigned risk" is limited based upon the monopolistic nature of our system, we feel that it should be kept as pure as possible if the division wants to move to a position more consistent with the norms of an insurance carrier, in keeping with statutory language. In addition, self-insureds have the direct consequence of sub-par performance in many of the areas identified in the criteria listing, providing the punitive consequences directly without the necessity of a surcharge.

85-9-13 Self insurance

13.2.e. The allowance of application to self insure at any time is a positive aspect of these rules and will allow state employers more flexibility in managing their workers' compensation risk.

13.3.a. Since the division is moving to an incurred basis for experience rating, it would make sense to remove language on account reconciliation. If the division's base and experience rating methodology is sound, this section is not logical and is punitive to employers seeking to self-insure.

13.3.c. This section addresses the "gain" to the fund in an accounts experience as a subscriber. Since the gain would have been the result of incurred losses less than those predicted, it would be more in keeping with the shift to an incurred loss accounting method to allow a reduction in the required security for incurred losses prior to self insurance, rather than adding the sentence to this section that forbids it.

13.6.a. Self - insurance is a means of funding workers' compensation liabilities that employers consider a positive business option. The arbitrary \$1 million minimum for prospective losses lessens the value of this option and directly contributes to the perception of our workers' compensation system as a negative factor in our business climate. An allowance for more realistic valuation of total liabilities, retrospective and prospective, should be a goal of these rules.

13.6.d. The financial ratio summarization to be used by the division should be stated in terms definitive enough for an employer to do a pre-application assessment of it's position.

13.6.g. As in section 13.6.d., specifics of the sliding scale would be helpful in pre-application assessments.

13.8.d. Assuming that the assigned risk section is not altered to remove self-insureds from consideration, this section exposes a self-insured account to a double penalty for surety deemed to be inadequate by the division. If this section remains in the rules, it should stipulate that the surcharge go to a special pool. It should also define the manner in which the surcharge pool, on a case by case and aggregate basis, will affect future assessments to accounts required to contribute.

Regardless of any changes in the assigned risk plan, we still see many problems with this section. First of all, application of this section relies upon the opinion of the

division's consulting actuary. The statute requires compliance with Generally Accepted Accounting Principles (GAAP), not actuarial opinion. GAAP requires recognition of case reserves plus a reasonable estimate of IBNR. It is our understanding that the actuarial estimates used by the division do not follow this process.

Secondly, even if actuarial opinion is used, legitimate positions can be established that vary significantly from that of the division actuary's. The very nature of actuarial exercises recognizes a great deal of uncertainty and the requirement that "reasonable" assessments be applied should encompass the consideration of other opinions.

85-9-14. Tax liability policy guidelines for receivables management

14.7.c. While we recognize that the statute allows the Division to permit employers to report wages and pay premium on other than a quarterly basis (23-2-5,(a), (1)), we are not aware of language enabling the Division to require it.

West Virginia Automobile & Truck Dealers Association

BEP-LEGAL DIVISION

96 OCT -8 PM 3: 33



POST OFFICE BOX 2028
CHARLESTON, WEST VIRGINIA 25327
TELEPHONE 304 343-4158
800 888-4158

Fax Number 343-8474

RUTH LEMMON

Executive Vice President

October 8, 1996

Mr. Randy Suter
Legal Services Division
Workers' Compensation Division
P.O. Box 3922
Charleston, West Virginia, 25339-3922

Dear Mr. Suter:

The West Virginia Automobile and Truck Dealers Association would like to commend both the department and committee that has worked so diligently to develop the Series 9, "Risk Management" regulations to put in place S.B. 250. We know, as businesspeople, that without this legislation and properly drafted regulations, that all would eventually loose under the current system. We are extremely interested in becoming one of the first pilot programs, as a Restrospective Group, tow continue to improve the Workers' compensation system.

We have reviewed these Rules and offer the following questions, comments and concerns:

SECTION 4.6

This section reads as follows: "in general, only one risk classification is permitted per policy account. The Division shall assign to the employer the classification yielding the highest base rate consistent with the risk being assessed."

We recommend adding the word "premium" between the words "rate" and "consistent" in the second sentence. As written, this makes it sound like the Division will assign an employer the classification that has the highest base rate. The addition of the word "premium" will change this section to be in line with the Division's current policy which is assigning and employer the classification that produces the most base rate premium.

SECTION 4.7

This section pertains to misclassifications and reclassifications. To summarize this complete Section, this Rule states that if the Workers;' Compensation Division discovers

that an employer has been placed in a lower premium rated classification and, as a result, has not paid at the proper premium level, the Workers' Compensation Division can go back to when the new operations began and order to charge the employer the additional premium. However, this Rule does not allow an employer to go back under the same terms if the Workers' Compensation Division has collected excessive premium. The Rule currently states that if an employer discovers that they are in a classification in which they are overpaying their premium, their classification is changed on a prospective basis only, unless the Division had erred in some way. We do not consider this Section to be fair and equitable. Therefore, we recommend that both the Workers' Compensation Division and the employer be able to go back five years in order to correct these type of classification questions. We feel this would be much fairer than the current Rule contemplates.

SECTION 6.14

This Section states that "The Division has the authority to assign at any time an employer to any workers' compensation insurance plan offered under the provisions of this rule." We understand the Division's need to assign employers to certain plans. For instance, if a self-insured employer is no longer able to be self-insured based on their financial strength, the Division should rescind their self-insured privilege. However, we do not believe that the Division should, for instance, place an employer in a retrospective rating plan instead of a guaranteed cost plan if the employer does not like the risk involved in a retrospective rating plan. Therefore, we recommend this language be struck.

SECTION 7.4.c

This Section pertains to the experience period for the Workers' Compensation Rating Plan. This Section states that "The experience period used to determine experience modification factors shall be the three fiscal years prior to the fiscal year during which the annual rate calculations are made."

During public hearings held on the Series 9 Rule, several employer representatives made comments that because the Workers' Compensation Division was only going to use dates of injuries that occurred in the first three out of the last four completed fiscal years, that employers would not have any incentive to continue to manage workers' compensation claims prior to the experienced period. We believe that with these Regulations, the same stance will be taken by employers. We understand that the Workers' Compensation Division is going to include the deficit in the premium assessments. However, we still believe that employers will not manage claims prior to the experience period because there is no direct incentive to do so. If the proposed rating system were in effect today, employers would have no incentive to defend claims that have a date of injury of June 30, 1992 or before. In excess of 50% of the claims presently in litigation by employers represented by Employers Service Corporation have dates of injury preceding July 1, 1992. If the Workers' Compensation Division would, in some way, include prior loss

adjustment expense which would directly affect an employer's premium rate, we feel this can be overcome. If employers do not manage their workers' compensation cases prior to the experience period, we believe the liability on the Workers' Compensation Division will grow, resulting in higher premiums. We also do not believe that the Workers' Compensation Division's personnel are in a position to manage these claims effectively. Their role has always been to act as an independent third party and not as a protector of the monies held by the Workers' Compensation Fund. Therefore, our concern in this area remains the same as the last Series 9 Rule that was proposed. This is a very serious problem that has the potential to undermine the fiscal solvency of the Fund.

SECTION 7.6.a

This Section states that "The name of the employer's employee for whom costs were incurred during the calendar year and the amount of such costs paid during the period covered by the employers' statement;..." This Section pertains to the annual statement that will be issued by the Workers' Compensation Division. We believe this Section should state that the paid and incurred costs to the employer's claims that occurred during the experience period will be provided to the employer on an annual basis. In this way, the employer can verify that the claimants on the list are their employees and they will also be able to see the liability attached to each of their claims.

SECTION 9.7.d

This Section pertains to the deductible plan that will be offered by the Workers' Compensation Division. We have two concerns regarding this Section. First, the second sentence states "The Division shall pay all costs of the claim or claims and seek reimbursement from the employer by the issuance of a pay order payable to the Division." We are disappointed in this language for deductible plans ranging from \$20,000 and higher. Because the Workers' Compensation Division will make these payments instead of allowing the employer to make payments, we feel this will deter some employers, especially self-insured employers, from choosing to participate in a deductible plan. Therefore, we encourage the Workers' Compensation Division pay these benefits. Many employers want to be able to process and implement the paying benefits. The election to pay the deductible directly would be a part of establishing the deductible plan.

Second, the last sentence of this Section states "All incurred costs shall be utilized to determine the employer's experience modification factor notwithstanding the employer's payment of deductible amounts." To include the deductible paid by the employer in the rate calculation is "double-dipping." Not only is the employer paying the deductible out of their pockets, but they have to pay more premium since the deductible amounts will be included in the errant calculation. For example, an employer with a high frequency of small claims would not want a deductible program because the premium tax credit may not offset the aggregate deductible paid. The Division would benefit if such an employer were

given incentive to select a deductible plan. We suggest that the deductible paid by the employer not be used in determining the employer's premium rate.

SECTION 9.9.c

This Section pertains to the deductible plan. This Section states "Depending on the nature of the modification of business, the Division may require the employer to pay a fee. The fee is assessed to offset the cost incurred to perform any reviews, including actuarial reviews, to determine any new or additional exposure which the modification may cause."

We are opposed to any additional fees being charged to employers, this will only serve to drive up costs. The purpose of the administrative fees paid by employers is to cover the costs of Workers' Compensation Division's personnel. We believe those fees are adequate to cover the cost of administration of the Workers' Compensation Fund. Therefore, we recommend this Section be deleted.

SECTION 10.2.c.

This Sections states that "The employers in the organizations must be in the same classification code. A sponsoring organization may sponsor more than one group." We believe that there needs to be a better definition of same classification code, allowing for similar codes in a case by case basis.

SECTION 10.2.d

In this Section we are concerned with the \$500,00 dollar minimum. The Section states "The group of employers must consist of at least two individual risk members and the aggregate workers' compensation premiums of the members are, as determined by the division, expected to exceed \$500,000 dollars during the coverage period. In the past the state of Washington required a \$200,000 minimum and recently reduced it to no minimum, the state of Ohio has a minimum of either \$150,000 or 100 participants, allowing for a case by case approval.

SECTION 10.3

Relating to group status, "Each employer who is a member of a group shall be jointly and severally liable for the workers' compensation obligations of other members of that group. No employer may be a member of more than one group for the purpose of obtaining workers' compensation coverage. Applying for more than one group on a valid application for group rating will result in rejection of the employer from all groups for which the employer applied. We believe that in the event an employer applies for more than one group, the Division should notify the employer that they have seven (7) days to pick one or the other.

SECTION 10.4.c

Notwithstanding the provisions of 10.4.a of this rule, an individual risk in a group may retain the services of an attorney or other authorized representative for claims-related matters, such as representations at claims hearings before the office of judges, through submission of the appropriate authorization for representation in such individual claim files. The Division will recognize only one authorized representative for notice and appeal purposes.

In situations where workers' compensation programs have joint and several liability, the participants should not be allowed to pick their representative. Because of the Joint and Several Liability the integrity of the group as a whole must be maintained and there is no assurance that the representative they use will have the groups best interest in mind when settling a claim. As a result they need to be required to choose from a list provided by one permanent group representative.

SECTION 10.4.d

This Section relates to an individual employer which has left a group retaining an authorized representative for both claims and risk matters. We believe that for the exception of any open claims that occurred while the employer was participating in a program, that these additional claims will still impact the group.

SECTION 10.5.c

An application for group rating is applicable for only one coverage period. The group must reapply each period for group coverage. Continuation of a plan for subsequent periods is subject to timely filing of an application on a periodic basis and the meeting of eligibility requirements each period. Timely filing, in this instance, means filing ninety (90) days prior to the end of a coverage period. An individual employer member of a continuing group who initially satisfied the homogeneous requirement of this rule shall be disqualified from participation in the continuing group for failure to continue to satisfy such requirement.

It is our belief that changing our current system to match that of Washington would best serve all parties concerned. In Washington, once the coverage period has begun, the state allows for quarterly submissions and additions to the program and reduces the period of time for filing to forty-five (45) days. There are far too many factors which can impact the group in a ninety (90) day period.

SECTION 10.5.e.

This Section states "In reviewing a group's application, if the Division determines that individual employers in the group do not meet the eligibility requirements for group rating, the Division will notify the individual employers and the group of this fact, and the group may continue in its application for group coverage without the disqualified employers, if the group still satisfies the minimum requirements for group rating as provided by this rule. We believe that if the Division decided that an employer or employers were not eligible, the Division should allow the group 14 days to make modifications to or rescind the application due to the fact that an employers denial may drastically alter the group's outlook for success.

SECTION 10.6.d.f

This Section states "Premiums identified as "Non-Subject" after adjustment reflect the increase or decrease in the basis thereof from the basis as estimated at the policy's inception." Non-subject premiums are not defined in the rules. Please provide a definition in this Section.

SECTION 10.7.a

This Section relates to the amount of time that a claim can affect a groups rating without giving a definite time frame. There needs to be a cap on how long a claim affects the groups experience

SECTION 10.7.b

This Section states "The division will recalculate the interim estimated premium annually thereafter until all subject losses are settled or at an earlier time by agreement with the group when a final reconciliation and adjustment are computed." We suggest an additional sentence be added as follows: "In no case can the maximum reviews extend beyond five (5) years." We believe the Division should limit the number of reviews for group plans. Neither the group nor the Division would want unlimited reviews. The companies that make up a group will probably change every year and inevitably companies participating in groups will go out of business. This will cause a lot of administrative headaches for the group and the Division if the reviews extend beyond five years.

SECTION 12.3

We have a few questions and concerns about the criteria. Criteria number 5 states "Whether the employer has failed to maintain the proper level of premium tax deposit." We believe this criterion should be eliminated because the failure to maintain the proper level of premium tax deposit causes the employer to be delinquent and possibly in default. Default is already covered by criteria number 4. The failure to maintain the proper level of premium tax deposit could be a one-time error made by the employer. In addition, criteria number 6 already covers this problem because it mentions being delinquent more than two times in any calendar year. Therefore, we feel criteria number 5 should be deleted.

Criteria number 7 states "When applicable, whether the employer has failed to post the amount of surety required by the Division." We believe this Section needs further clarification. We know that the Workers' Compensation Division is reviewing surety amounts and notifying some self-insured employers to determine a plan to bring this shortage to the required level over a period of time. We do not believe that an employer who has made an agreement with the Workers' Compensation Division to bring their surety up over a period of time should be considered in violation of this criteria. Therefore, we recommend adding additional language to this Section. Further, we believe it should state that only after due notice of the shortage and allowing 90-days to post the required amount, before the employer will be considered to have failed to meet this criteria.

Criteria number 8 states "Whether the employer has failed to make payment or payments to a medical provider or the claimant, as required by the applicable provisions of the West Virginia Code or rule promulgated thereto." We recommend that language be added to state that this is only the case after a thorough investigation into the matter by the Workers' Compensation Division. As you know, in Section 3.11 I previously commented on proper pay orders. Self-insured employers should only be made responsible for paying proper pay orders and proper medical bills. Self-insured employers should not be held responsible for paying improper bills.

SECTION 13.4.a.C(g)

This Section pertains to employers getting refunds. It states "Employers must collect all overpayments and duplicate payments directly from health care providers. When the employer collects such overpayments and duplicate payments from a health care provider, then the employer shall notify the Division of such collections in the manner prescribed by the Division."

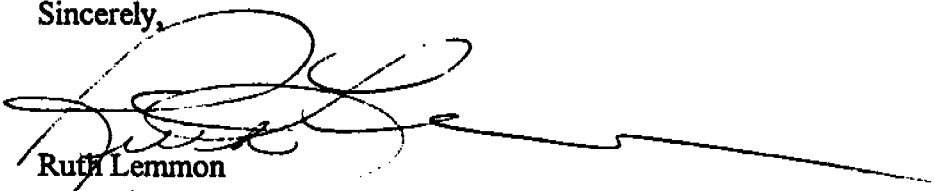
In some cases, medical refunds come from the Workers' Compensation Division. The reason for this is when a second injury life award is granted or a claim is rejected, the Workers' Compensation Division reimburses the self-insured employer for any payments made after the effective date of the decision. Therefore, this Rule needs to contain a provision for this activity.

SECTION 13.8

This Section pertains to maintaining self-insured status. In 13.8.a., it states "The renewal application shall be in the form prescribed by the Division and shall be accompanied by a current audited financial statement and a renewal processing fee of five hundred dollars (\$500)." Again, we do not feel that a self-insured employer should have to pay an annual renewal fee. This is done in other states but in other states, the employer does not pay any administrative fees. It seems quite unfair that self-insured employers are paying the Workers' Compensation Division millions of dollars on an annual basis yet the Workers' Compensation Division is still requiring a \$500 self-insurance renewal fee. We believe the current amount of administrative fees are more than adequate to cover this activity.

Again, we thank you for the opportunity for our input.

Sincerely,



Ruth Lemmon
Executive Vice President

JACKSON & KELLY

ATTORNEYS AT LAW

1600 LAIDLEY TOWER

P. O. BOX 563

CHARLESTON, WEST VIRGINIA 25322

TELEPHONE 304-340-1000

TELECOPIER 304-340-1130

WRITER'S DIRECT DIAL NO.

340-1301

October 8, 1996

1600 LINCOLN STREET
DENVER, COLORADO 80204
TELEPHONE 303-697-0000

178 EAST MAIN STREET
LEXINGTON, KENTUCKY 40508
TELEPHONE 606-255-8900

2401 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20007
TELEPHONE 202-673-0200

1600 TECHNOLOGY DRIVE
FAIRMONT, WEST VIRGINIA 26564
TELEPHONE 304-386-3000

*Jackson & Kelly is a member of Law
Mundi, a global association of more
than 120 independent law firms.*

300 POWHART AVENUE
MARTINSBURG, WEST VIRGINIA 25401
TELEPHONE 304-288-8800

208 RUSSELL AVENUE
NEW MARTINSVILLE, WEST VIRGINIA 26105
TELEPHONE 304-486-1751

6000 HAMPTON CENTER
MORGANTOWN, WEST VIRGINIA 26505
TELEPHONE 304-886-3000

700 EAST WASHINGTON STREET
CHARLES TOWN, WEST VIRGINIA 25414
TELEPHONE 304-728-6088

800 GARFIELD AVENUE
PARKERSBURG, WEST VIRGINIA 26102
TELEPHONE 304-422-1419

Randall B. Suter, Esquire
Legal Services Division
Workers' Compensation Division
Bureau of Employment Programs
Post Office Box 3922
Charleston, West Virginia 25339-3922

RE: Comments to Proposed Series 9 Rules

Dear Mr. Suter:

Please find enclosed herewith a copy of the comments which I am filing on behalf of the West Virginia Coal Association to the Proposed Series 9 Rules presently under consideration. Also, you should note that the Coal Association concurs with the comments which have been filed on behalf of the Business and Industry Council since they are a member of that organization.

Very truly yours,


TIMOTHY E. HUEFMAN

TEH:tsn
Enclosure

CHASFN4:36649

BEP-LEGAL DIVISION
COMMENTS TO UNDERWRITING RULES
TITLE 85-SERIES 2
96 OCT 9 PM 3:34

Section 85-9-3.19

This section specifies that a delinquent employer shall not be considered to be in good standing. This section conflicts with West Virginia Code §21A-2-6, under which an employer's account is not included on the Division's permit block list until the account is actually in default. Delinquency may occur for any variety of reasons, including circumstances where the employer is not at fault.

Section 85-9-3.23

This section defines ownership and control so as to expand the definition of employer beyond what is presently provided by statute. This definition and in particular the presumptions of ownership and control appear to be in conflict with principles of basic corporate law. Specifically, by presuming ownership and control of a corporate entity by a stockholder who owns between 10% and 50% of the stock, these rules expand the potential liability of a stockholder beyond the value of the stock. This section also conflicts with our Supreme Court's decision in State v. McCompton & Son Lumber Co., Inc., 449 S.E.2d 71 (W.Va. 1994). In McCompton, our Supreme Court held that for an owner or officer of a corporation to be liable for corporate debt, there must be some participation in or sanctioning of a wrongful act. Our Court also held that a regulation which expands the definition of employer and affects the substantive rights of the corporation and its employees cannot be construed to operate retroactively.

Additionally, the presumptions of ownership and control contained in this section, would be directly contrary to the provisions of West Virginia Code §21A-2-6. In

BEP-LEGAL DIVISION
96 OCT -8 PM 3:34

that particular code section, the presumptions of ownership and control utilized by the Division of Environmental Protection Surface Mining Reclamation Regulations, which appear to be consistent if not identical to the presumptive definitions utilized in this rule, are specifically excluded from use when determining the identity of employing units who are in default for the purpose of a permit block. These presumptions when used in conjunction with Section 85-9-5.5(b), create a situation which is directly contrary to existing law. In effect, the use of these definitions will create situations where employers who are deemed to have ownership and control of a business which is in default, will be denied coverage for a subsequent business operation and as a consequence, will be in default and can be permit blocked, contrary to code section 21A-2-6.

CHASFS4:36649

JACKSON & KELLY

ATTORNEYS AT LAW

1800 LAIDLEY TOWER

P. O. BOX 553

CHARLESTON, WEST VIRGINIA 25322

TELEPHONE 304-340-1000

TELECOPIER 304-340-1130

WRITER'S DIRECT DIAL NO.

340-1301

October 8, 1996

300 FOXCROFT AVENUE
MARTINSBURG, WEST VIRGINIA 25401
TELEPHONE 304-283-8800

288 RUSSELL AVENUE
NEW MARTINSVILLE, WEST VIRGINIA 26166
TELEPHONE 304-466-1781

8000 HAMPTON CENTER
MORGANTOWN, WEST VIRGINIA 26806
TELEPHONE 304-598-3000

700 EAST WASHINGTON STREET
CHARLES TOWN, WEST VIRGINIA 25414
TELEPHONE 304-728-8088

800 GARFIELD AVENUE
PARKERSBURG, WEST VIRGINIA 26102
TELEPHONE 304-422-1419

1880 LINCOLN STREET
DENVER, COLORADO 80204
TELEPHONE 303-627-0000

175 EAST MAIN STREET
LEICINGTON, KENTUCKY 40504
TELEPHONE 606-255-8800

2401 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20007
TELEPHONE 202-673-0800

1000 TECHNOLOGY DRIVE
FAIRMONT, WEST VIRGINIA 26034
TELEPHONE 304-398-2000

*Jackson & Kelly is a member of Law
Minds, a global association of more
than 120 independent law firms.*

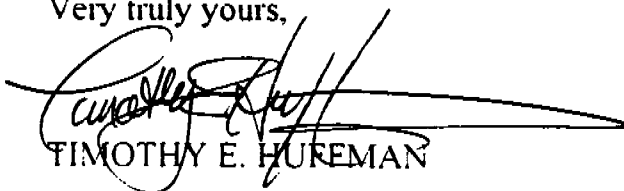
Randall B. Suter, Esquire
Legal Services Division
Workers' Compensation Division
Bureau of Employment Programs
Post Office Box 3922
Charleston, West Virginia 25339-3922

RE: Comments to Proposed Series 9 Rules

Dear Mr. Suter:

Please find enclosed herewith the comments which I am filing on behalf of the West Virginia Business and Industry Council to the proposed Series 9 Rules, presently under consideration. I have also attached a complete listing of the member organizations which comprise the Business and Industry Council so that the Performance Council will have this information when these comments are considered.

Very truly yours,


TIMOTHY E. HUFEMAN

TEH:tsn
Enclosure
CHASFS4:36649

SEP-LEGAL DIVISION
96 OCT -8 PM 3:34



WEST VIRGINIA BUSINESS & INDUSTRY COUNCIL
P. O. Box 5159, Charleston, West Virginia 25311

WV Forestry Association
Charleston Regional Chamber of Commerce
Independent Oil & Gas Assn. of WV
WV Cable Television Association
WV Coal Association
WV Consumer Finance
WV Oil Marketers & Grocers Association
WV Petroleum Council
WV Retailers Association
WV Soft Drink Association
The Arnold Agency
Builders Supply Association of WV
PhRA
WV Medical Association
Contractors Assnociation of WV
Flexible Pavements Council
WV Hospital Association
WV Manufacturers Association
WV Mining & Reclamation Association
WV Society of Certified Public Accountants
RMI Ltd.
Organization Management Services
WV Self Insurers Association
Charles Ryan Associates
Tri-State Coal Operators Association
WV Chamber of Commerce
WV Oil & Natural Gas Association
WV Motor Truck Association
Government Relations Specialists
AEP
Anker Energy Corp.
Bell Atlantic
Bowles, Rice, McDavid, Graff & Love
CONSOL, Inc.
Norfolk Southern Corp.
Cecil I. Walker Machinery
Georgia-Pacific Corp.
Jackson & Kelly
Kimberly Industries
Massey Coal Services
Monongahela Power Co.
Robinson & McElwee
WV American Water Co.

COMMENTS TO UNDERWRITING RULES
TITLE 85, SERIES 9

Section 85-9-3.10(b)

This section places an employer's account in default prior to the actual date when the employer had employees and thus would be required to subscribe. This section appears to be contrary to West Virginia Code §23-2-5(d) and §23-2-5(h)(1) in that there has been no provision made for a "delinquency" period with appropriate notification and an opportunity to correct the delinquency before default occurs. The operation of this section would be unduly harsh on new employers by placing their accounts in default without an opportunity to correct the situation during the grace period.

Section 85-9-3.19

This section specifies that a delinquent employer shall not be considered to be in good standing. This section conflicts with West Virginia Code §21A-2-6, under which an employer's account is not included on the Division's permit block list until the account is actually in default. Delinquency may occur for any variety of reasons, including circumstances where the employer is not at fault.

Section 85-9-3.23

This section defines ownership and control so as to expand the definition of employer beyond what is presently provided by statute. This definition and in particular the presumptions of ownership and control appear to be in conflict with principles of basic corporate law. Specifically, by presuming ownership and control of a corporate entity by a stockholder who owns between 10% and 50% of the stock, these rules expand the potential liability of a stockholder beyond the value of the stock. This section also conflicts with our

Supreme Court's decision in State v. McCompton & Son Lumber Co., Inc., 449 S.E.2d 71 (W.Va. 1994). In McCompton, our Supreme Court held that for an owner or officer of a corporation to be liable for corporate debt, there must be some participation in or sanctioning of a wrongful act. Our Court also held that a regulation which expands the definition of employer and affects the substantive rights of the corporation and its employees cannot be construed to operate retroactively.

Additionally, the presumptions of ownership and control contained in this section, would be directly contrary to the provisions of West Virginia Code §21A-2-6. In that particular code section, the presumptions of ownership and control utilized by the Division of Environmental Protection Surface Mining Reclamation Regulations, which appear to be consistent if not identical to the presumptive definitions utilized in this rule, are specifically excluded from use when determining the identity of employing units who are in default for the purpose of a permit block. These presumptions when used in conjunction with Section 85-9-5.5(b), create a situation which is directly contrary to existing law. In effect, the use of these definitions will create situations where employers who are deemed to have ownership and control of a business which is in default, will be denied coverage for a subsequent business operation and as a consequence, will be in default and can be permit blocked, contrary to code section 21A-2-6.

Section 85-9-3.31

This section would include in the definition of "surplus fund," a set aside of funds for the reduction of the deficit. West Virginia Code §23-3-1 contains no language allowing use of the "surplus fund" to reduce the deficit.

Section 85-9-4.7

This section and its subparts pertain to misclassification and/or reclassification of an account where an error has been discovered by the Division. In summary, when an employer has been discovered to be misclassified and as a consequence has underpaid premium, the reclassification of the account is made retroactive with the employer owing the difference between the correct rate and the incorrect rate which was paid. However, when an employer has been overpaying as a result of a misclassification, this rule would not allow a retroactive application to benefit the employer and result in a refund. This section should be amended to provide that where the error has resulted in an overpayment by the employer, the employer would be entitled to retroactive application of the new classification and a refund.

Section 85-9-5.5.b

The comments with respect to Section 85-9-3.23 apply to this section. Additionally, West Virginia Code §§23-2-5 and 23-2-5a, do not give the Division authority to refuse to issue coverage to an employer who completes an application for benefits and tenders the appropriate premium deposit. Additionally, under the present statute, the Division's appropriate remedy for pursuing an employer deemed to be in default, exists under West Virginia Code §23-2-5a. In subparagraph (f), the Division has the authority to seek injunctive relief in the Circuit Court of Kanawha County for any employer continuing to do business where there is liability for defaulted premium. In short, this section exceeds the statutory authority of the Division for collection of premiums from defaulting employers.

Section 85-9-6-1a

This section sets forth twenty separate factors which the Division will consider in determining whether an individual employee is actually an employee or an independent contractor. The factors enumerated go well beyond both West Virginia Code §23-2-1a and the numerous Supreme Court decisions which have been decided on the specific issue of independent contractors' status. This rule expands the definition of the employment relationship well beyond that contemplated by statute. The present language of code §23-2-1a defines an employee who would be subject to the provisions of the workers' compensation laws, as "...all persons in the service of employers and employed by them for the purpose of carrying on the industry, business, service, or work in which they are engaged. ...". In defining the perimeters of that employment relationship, numerous decisions have been handed down by our Supreme Court all of which point to the right to control or supervise the work in question as the primary determining factor. This proposed section virtually eliminates independent contractor status for any individual. Obviously, the effect of such proposed changes go well beyond the present law and should be addressed by the legislature. Of the twenty factors which are enumerated in this section, only subsection A., relating to control or direction of the work, should be utilized in this rule in the absence of a change in the statute.

Section 85-9-6.14

This section should be amended to allow mandatory assignment of an employer by the Division to the adverse risk plan only. As presently written, the Division would have the authority to assign any employer to any of the plans offered, including the deductible and

retrospective rating plans. The Division should not have the authority to require an employer to participate in such other plans if the employer does not desire to do so.

Section 85-9-7.4

This section and its subparts propose an entirely new scheme for merit rating regular subscriber premiums. The present merit rating formula takes into account losses which are paid during the rating period, without regard to the date of injury or date of last exposure. While this proposed rule is substantially changed from the initial proposed rule, further modifications are necessary to insure that all claims are defended by regular subscribing employers.

Specifically, 7.4.d.A should be amended to read "A" or "actual reported losses" means paid losses plus case reserves incurred on a fiscal year basis and shall include a component for prior loss expense for claims with a date of last exposure or date of injury outside the experience period but where charges were made and/or awards paid within the experience period."

The purpose of this change would be to insure that a loss adjustment expense is added to the equation for claims which occur outside the experience period but for which charges are made and awards entered and paid within the experience period. Absent such a change, it is conceivable that a substantial majority of claims which are presently in litigation would become undefended and result in additional liability to the remaining subscribers to the Fund.

Section 85-9-8.2(2)

See comments to Section 85-9-6.14 above.

Section 85-9-9.7d

In providing for a deductible plan, the proposed rule requires that the Division shall pay all deductibles with later reimbursement by the employer and further, that all costs incurred, including the deductible amount, shall be utilized in determining the employer's experience modification factor. This section should be amended to provide for the direct payment of deductibles by employers approved in the deductible plan. This would give the employer the opportunity to pay the required deductible amounts without the necessity of receiving a pay order from the Division. The employer would thus be able to more quickly meet its deductible obligations with payments to injured employees.

Additionally, the deductible amount that is paid directly by the employer should not also be included in determining the employer's experience modification factor. The employer is in effect "self-insuring" the deductible amount if allowed to participate in such a plan. Those amounts paid directly by the employer should not be used to penalize the employer when computing the experience modification factor.

Section 85-9-11.1a

This section should be amended to allow participation in the individual respective rating plan by election of the employer only. The employer should not be required by the Division to participate in such a plan that may result in the employer owing additional premium at the end of a reporting period. Obviously, if the Division is doing an adequate job of calculating experience modification factors and projecting losses for each individual company on a merit-rated basis, there should be no need for the Division to require assignment to an individual retrospective rating plan.

Section 85-9-12.3

While the placement criteria for the adverse risk plan has been amended from the initial proposed rule, additional amendments and/or deletions are necessary. Specifically, the criteria (10), relating to the employer being cited for failure to comply with any applicable federal state safety laws, should be deleted. The Division should only consider criteria which relate directly to required employer conduct under the Workers' Compensation Act. Additionally, under the proposed rule, certain citations may have absolutely no relationship to claims losses and the original purpose for the creation of the adverse risk plan.

Additionally, criteria (11) relating to the ownership and control provision of the proposed rule, should also be eliminated from consideration under the adverse risk plan. Specifically, see the comments under section 85-9-3.23.

Finally, criteria (12) should be eliminated from the rule. This particular criteria as written is much too broad and does not afford the employer adequate notice as to what additional factors will be considered in determining whether the adverse risk plan should be mandated.

Section 85-9-13.3.b

This section fails to take into account that the new merit rating formula establishes a reserve at the outset for the future costs of awards and medical benefits and charges that amount to the employer's account for premium merit rating purposes. As a consequence, the employer who elects to self-insure its risk is required to pay twice for the future value of awards and medical benefits.

Section 85-9-13.2.C.(g)

This section should be amended to provide for the self-insured employer to be reimbursed by the Division for overpayments where such overpayments were made pursuant to a pay order issued by the Division.

Section 85-9-13.11.a

This section is contrary to West Virginia §23-2-9h in that the Commissioner may not require a self-insured employer to pay the present value of all unpaid compensation in a claim. The statute only provides that the Division may permit a self-insured employer to pay such an amount.

Section 85-9-14

This section and all of its subparts propose to establish a system for "receivables management" whereby the Division will establish credit ratings for groups of employers and through which may require accelerated deposits of premium taxes due on a basis different than that which is presently required by West Virginia Code §23-2-5. The apparent purpose for this section is to allow the Division to collect on a more frequent basis, premium dollars due from employers who the Division determines to be bad credit risks. However, this entire section is contrary to the present statutory provision for collection of premium taxes. Specifically, West Virginia Code §23-2-5 requires that an employer shall pay premium taxes quarterly on or before the last day of the month following the end of the quarter and shall maintain a premium deposit equal to the prior quarter's premium. That section was amended to provide that the Division "may permit" employers who qualify to report gross wages and pay taxes at some other interval. Consequently, the present statute would only permit rules which allow employers in certain categories, upon their own

election, to report and pay premium taxes on some different basis. In order to implement a program such as anticipated by this proposed rule, the Legislature must amend West Virginia Code §23-2-5.

Finally, this section purports to cause an employer's account to become delinquent for failure to maintain an adequate premium deposit under the provisions of this section. In other words, if an employer were determined to be a bad credit risk and required to deposit premium on a weekly basis, and such employer failed to make the appropriate deposit on a weekly basis, notwithstanding the presence of an adequate quarterly deposit, such employer would become delinquent prior to the end of the quarter.

Section 85-9-15.4b

This proposed rule would require the Division to keep any terminated employer's deposit if total claims paid and the costs of claims reserved were less than the premium taxes paid at the time of account termination. This rule is contrary to West Virginia Code §23-2-5, which requires that "the premium deposit shall be credited to the employer's account on the books of the Division and used to pay premiums and any other sums due to the Fund when an employer becomes delinquent or in default as provided by this article." Consequently, if such employer, when terminating an account, is neither delinquent on its premium tax obligations nor in default, the premium deposit must be refunded as such funds cannot be used for any other purpose.

Section 85-9-17.3.a

This section should be modified to provide that if an employer succeeds to an account where the predecessors modification factor was less than one, the new employer