West Virginia University
College of Law
P.O. Box 6130
Morgantown, WV 26506

fax

to: Randall Suter

fax #: (304) 926-5414

from: Emily A. Spieler, Professor of Law

Direct dial phone: (304) 293-7690
Fax: (304) 293-6891
Internet: spieler@wvu.edu

date: October 8, 1996

subject: 85 C.S.R. 9

pages: 7 including cover memo

NOTES: Attached are some brief comments on the Risk Management rule.

COLLEGE OF LAW
WEST VIRGINIA UNIVERSITY

Direct dial: (304) 293-7690
Fax: (304) 293-6891
Internet: spieler@wvu.edu

October 8, 1996

Randall B. Suter
Counsel
Legal Services Division
P.O. Box 3922
Charleston, WV 25339-3922

Re: Proposed Rule 85 C.S.R. 9 "Risk Management"

[Comments filed by FAX to fax number (304) 926-5414 on the above date]

Dear Mr. Suter:

Due to other commitments, I must make my comments on this lengthy rule quite brief. This means that I will not comment on the particular methodologies used for the calculation of rates.

First: The title of the rule (Risk Management) is a complete misnomer. The rule is directed primarily at rate adequacy and rate equity issues (for insured employers) and governance of self-insured employers. It should be re-titled Ratemaking, Premium Tax Assessment Methodology, and Regulation of Self-insured Employers (or some equivalent). Re-titling is important so that those who are looking for the rate-making rule can find it.

Second: The rule appears to fail to deal with incurred but not reported (IBNR) claims. IBNR is not defined in the definitional section nor discussed in the context of incurred claims elsewhere in the rule. This would appear to be a significant shortcoming.

Third: The effect of a "cure" of a default is not fully defined or explained. It should be clear that a later "cure" does not eliminate the consequences of the default for the period that the default was in effect.

Fourth: Conversion by an employer to a deductible or retrospective rating plan should require notice to employee representatives (by mailing) and to employees (by posting). These plans create heightened financial incentives for employers to suppress claims instead of preventing injuries. Employees and their representatives

aware of such a history unless employees are notified of the application of the employer for the change and are given an opportunity to be heard.

Fifth: This same comment applies to approval and revocation of self-insured status.

Sixth: With regard to assignment to the adverse risk plan:

> Information should formally be sought from employees and their representatives in making the determination regarding whether an employer should be assigned to this plan.
>
> Approval of the CPPC should not be required for this assignment. This is a decision that should be made administratively, based upon objective criteria. Hearings are available under §85-9-20 for full review of any decisions.
>
> Add to the list of placement criteria: Whether the employer has failed to cooperate with an investigation conducted by the National Institute for Occupational Safety and Health.

Seventh: I assume that under a deductible plan, the employer will be responsible for payment of compensation, reimbursement, and medical providers, up to the maximum of the deductible. In view of this, the maintenance of a deductible plan should be subject to the same type of restrictions as maintenance of self-insured status. See § 85-9-13.8.

Eighth: Maintenance of any plan, self-insured or deductible, which allows an employer to pay compensation directly should be subject to a review procedure which can be triggered either by the Division or by employees or their representatives. No provision is made in the rule for revocation of self-insured or deductible plan status based upon employees or claimants application for such revocation. This should be added.

Ninth: The following should be added to §85-9-21.3:

> 21.3.b. Whether or not a specific employer has obtained coverage under the provisions of this chapter, whether the employer is self insured or has applied for self-insured stats, whether the employer has applied for a retrospective rating plan (individual or group) or whether the employer has applied for or been approved for a deductible plan.

Tenth: The rule allows the Performance Council to retain considerable authority to set both the methodology and the setting of rates. It tells us nothing about the actuarial

assumptions which will be used in rate setting. It therefore fails to make any guarantees regarding how rates will be calculated, nor does it serve to provide adequate education to employers regarding rate calculation. For example, both credibility factors and caps for single losses are not specified; knowing that the "swing factor" "may fluctuate" does not provide the necessary information to employers or the public.

Eleventh: In the computation of the premium tax in the deductible plan, consideration should be given to eliminating the cap on single losses or to raising this cap for the purposes of rate calculation for the liability being assumed by the Fund and being financed by the employer's premium tax. As the deductible amount rises, the failure to adjust this cap may result in inadequate revenue to the Fund from employers in the deductible plan. Please ignore this comment if the tables to be used pursuant to 9.7.b. would incorporate this concern.

Most of the comments which I filed last April (copy attached) regarding the proposed Underwriting Rule are also applicable here (with the obvious exception of the first page and some other specifics). Although this new rule will certainly create work for third part administrator firms, it does not in and of itself provide better communication to employers regarding the rate-making process. Nor does the change in rate-making to allow for deductibles and retrospective rating inherently change an employer's approach to risk management or injury prevention.

Finally, I suspect that the fiscal note attached to this rule is insufficient. I would urge the Performance Council to explore this issue, and to discuss whether there has been any consideration to the use of consultants or a consulting contract for implementation of the rule; cost of such a contract does not appear to be included in the fiscal note. I personally believe that implementation should be done by the Fund's regular employees; employees with the necessary expertise should be hired to work with the Fund's actuary. The implementation plan for the rule should be discussed at a public meeting and should be fully understood by Council members.

Thank you for the opportunity to respond to this rule.

Sincerely,

Emily A. Spieler
Professor of Law

cc: Ed Staats

COPY

Direct dial: (304) 293-7690
Fax: (304) 293-6891
Internet: spieler@wvnvm.wvnet.edu

April 30, 1996

Randall B. Suter
Counsel
Legal Services Division
P.O. Box 3922
Charleston, WV 25339-3922

Re: Proposed Rule 85 C.S.R. 9 "Underwriting"

Dear Mr. Suter:

Please accept this letter as comments on the above proposed rule.

First, this rule clearly does not encompass the full authority given to the Division regarding underwriting and ratemaking in the 1995 legislation. In fact, in many respects, it is simply a reiteration of the prior practices. It certainly fails to offer substantially increased incentives for safety, despite the fact that the Division claimed that the 1995 legislation was designed to improve safety – and this was to be achieved through implementation of the new underwriting language. I certainly hope that the underwriting rule will be revised again to reflect the Division's new authority before rates are set for FY1998; I also hope that further consideration will be given in the future to applying an hours worked, rather than a gross wages, rate calculation methodology to certain high wage, high risk industries (particularly construction).

Unfortunately, the failure of the Division to promulgate a timely underwriting rule compatible with the 1995 legislation is consistent with the Division's (and performance council's) chronic delays in the development and finalization of rules in the areas of safety and rehabilitation (most notably Series 15, Rehabilitation, which was finally promulgated in 1994, implementing 1990 legislation; and Series 23, Loss Prevention, and Series 24, Qualified Loss Management Programs, which I believe have not yet been finalized and are to implement 1993 legislation). The history of these rules stands in stark contrast to the rapid promulgation of rules designed to tighten up on benefits for workers or medical treatment. I hope that the members of the

performance council and the Division's legal staff will examine this contrast and attempt, in the future, to finalize rules more quickly which may help to prevent injuries or promote rehabilitation.

Second, with regard to the specifics of the ratemaking rule:

- The current ratemaking system, which is largely mirrored in the proposed rule, is confusing and poorly understood by employers. The effect of the use of three year loss averages and credibility factors is that employers are unable to draw any clear relationship between work place risks, injuries, and rates. It is essential that the ratemaking process be better explained to employers if it is going to be retained in its current form. Employers' ignorance impedes any possible "safety incentive" effects of merit rating. I have previously raised serious questions regarding the efficacy of ratemaking as a tool for real safety.[1] It is critical, if prevention is the goal, that employers comprehend the relationship of controllable risks in the workplaces to workers' compensation costs. I do not think the current draft rule addresses this concern adequately; the process is not sufficiently clear and easy to understand or explain.

- Use of $1500 average three year losses for eligibility for merit rating will, of course, result in limited merit rating of large numbers of small employers, particularly those in dangerous industries. The actual effect of this merit rating may, however, be quite small, depending upon the calculation of the credibility factor. The rule is silent on how credibility factors are to be determined, leaving this calculation entirely to actuarial discretion. To the extent that the experience rating is extremely limited because the size of an employer limits the credibility of events, it might make sense to reexamine (and possibly increase) this initial amount. I suggest this in part because I think that very limited experience modification contributes to employers' confusion about ratemaking.

- The rule is not clear on the methodology for the calculation of premium surcharges and credits. This should be clarified.

- I agree that new employers should be tied to the base rate for their class for the full experience period, presumably three years. Some "new" employers are shams, however. I would suggest that any new employer with sufficient corporate or other identity with a predecessor which was in the assigned risk pool be required to enter as a member of the assigned risk pool.

---

[1] See E.A. Spieler, *Perpetuating Risk? Workers' Compensation and the Persistence of Occupational Injuries*, 31 HOUSTON LAW REV. 119-264 (1994).

• With regard to the assigned risk plan: I applaud a plan which exempts the "good" employers from having to pay, through an averaging system, the costs of all "bad" employers. The assigned risk plan can result in substantial progress toward rate equity among employers, particularly in industries like underground coal mining. I would suggest three changes in this section of the rule. First, it needs to be made more clear that the employer which is in the assigned risk plan will not benefit from the reduced base rate in the calculation of its own rate: that is, that the base rate for employers in the assigned risk plan will be all employers in the industrial class, including the high risk employers, and that this rate will then be raised by the multiplier. Only those employers not in the assigned risk plan should benefit, through the retrospective rating process, from the removal of the losses of the assigned risk plan employers. Second, I would urge that language be added to the rule which will allow the publication of the names of the employers who are in the assigned risk plan or, at a minimum, an annual statement be published by the Division which sets out the number of employers in each industrial class in the assigned risk plan and the reasons for assignment to this plan. Finally, although this may be my oversight, I was unable to locate the applicable provision of the rule which defines "excessive" with regard to an EMF which would force an employer into the assigned risk pool. This determination should not be discretionary for the commissioner and performance council; it must, instead, be set out in this rule: employers are entitled to know what EMF will trigger this action; the commissioner and members of the performance council should not be subject to individual pressure regarding the placement of an employer into this group. The threshold EMF for this purpose should be decided, in consultation with the actuary, either for all employers or by industrial classification and should be set out as a component to this rule.

I offer no comments regarding the self insurance component of this proposed rule.

Sincerely,

Emily A. Spieler
Professor of Law

WEIRTON STEEL CORPORATION

David L. Robertson
Executive Vice President
Human Resources & Corporate Law
304-797-2252 / FAX 304-797-3419

BEP-LEGAL DIVISION
96 OCT -8 PM 4:30

October 8, 1996

Randall B. Suter, Esq.
Legal Services Division
Workers' Compensation Division
4700 MacCorkle Avenue, SE
Charleston, WV 25304

Re: Weirton Steel Corporation Comments on Series 9 Regulations

Dear Mr. Suter:

I am writing on behalf of Weirton Steel Corporation ("Weirton Steel") to provide its comments relative to the proposed Title 85, Series 9, Rules and Regulations entitled *Risk Management*. Although the efforts of the Workers' Compensation Division in redrafting its proposals for the Series 9 Regulations have resulted in considerable improvement over the previous proposal entitled *Underwriting*, there continue to be a number of issues raised by the current draft which are of considerable concern to Weirton Steel. It is not my intention to address each and every shortcoming which may be present in the proposed *Risk Management* guidelines because I am aware that more comprehensive comments have been prepared and submitted by other organizations such as the West Virginia Self-Insurers Association and Acordia. Instead, I will limit my remarks to issues which Weirton

Steel believes could have an immediate and substantial detrimental impact upon its business operations.

Weirton Steel Corporation, a major integrated steel producer, was formed in 1982 for the purposes of acquiring the assets of the Weirton Steel Division of National Steel Corporation. The acquisition was financed through an Employee Stock Ownership Plan. Weirton Steel and its predecessors have operated as an integrated steel producer in the Weirton, West Virginia, area since 1909. It is a Fortune 500 Industrial Company with annual revenues in excess of $1 billion. The Company's net worth, as of June 30, 1996, exceeds $170 million, its balance sheet is largely unencumbered except for an accounts receivable facility (WRI) which is the company's sole source of readily available funds for short term borrowing and which approximates $70 million. The Company has cash reserves which are in excess of $100 million. The maintenance of these financial resources is integral to Weirton Steel's continued success. With approximately 4,554 union employees and 870 management employees, Weirton Steel is the largest private employer in the State of West Virginia.

Since its inception, Weirton Steel has self-insured all of its workers' compensation risk. There has been no instance during that period of time when the Company has failed to meet its obligation to pay benefits provided under the Act for its injured employees, failed to honor pay orders in a timely fashion, or failed to satisfy any obligation imposed by the Act or its implementing regulations so as to

place itself in a default status. Weirton Steel takes its workers' compensation responsibilities seriously and prides itself as being one of the State's most conscientious employers in this regard. Weirton Steel's self-insured status, under the terms and conditions which have been in place since its inception, has allowed the Company to carefully manage its workers' compensation risk and to thereby avoid unnecessary encumbrance of its financial resources. The steel industry is a highly competitive, capital intensive enterprise which is subject to constant change and innovation. A business's ability to borrow funds for capital improvements is dependent upon its ability to maintain maximum borrowing flexibility through unencumbered assets which can be pledged to support such borrowing. To the extent surety requirements are increased, requiring increased collateralization, Weirton Steel's borrowing flexibility will be impaired. This impairment will limit Weirton Steel's ability to make the capital improvements which are necessary for it to remain a competitive and viable steel producer.

One of the cornerstones of Weirton Steel's success has been its ability to generate and rely upon strategic business planning. In order for such planning to be effective, it must be based upon predictable future events. The annual renewal of the Company's self-insured status, the terms and conditions of that renewal and the other costs associated with managing its workers' compensation program have been among the "predictable events" which have formed the basis for past, current and future business planning at Weirton Steel. It is critically important that the

Company continue to be able to rely upon these known and stable financial commitments which in turn permit planning that frees financial resources for the maintenance, replacement and growth of its production capability.

The stated objective of the Series 9 Regulations is to provide for "a fair and equitable system" for determining the risk of and pricing for workers' compensation coverage. This purpose comports with good business practices and should in turn improve reliability and predictability. However, some of the provisions of the Series 9 Regulations stray from this stated purpose in that they tend to be unjustifiably discretionary, punitive, redundant and inconsistent with the Act and other regulations. Perhaps most importantly, many of these provisions are arbitrary in that they establish requirements without prescribing guidelines, criteria or standards. The application of these unjustified provisions to Weirton Steel could seriously threaten the stability of its capital intensive business. Our concerns in this regard are not predicated upon mere speculation, but rather upon recent experiences with the Division.

During the summer of 1995, Weirton Steel received its annual reminder from the Workers' Compensation Division that it would need to renew the letter of credit which had previously been posted to satisfy its self-insurer surety requirement. At the time of the notice, Weirton Steel's surety requirement was $3.1 million. In subsequent conversations with the Division, Weirton Steel was advised that its surety requirement had been recalculated pursuant to the requirements of the soon to be

promulgated Series 9 Regulations and that the amount had been increased from $3.1 million to an amount that could virtually eliminate the Company's short-term borrowing capabililty and significantly increase its long-term borrowing costs. This increased figure represented the Company's undiscounted workers' compensation liability as calculated by the Division's consulting actuary, Mr. Robert Fingers. Mr. Fingers purportedly utilized actuarial principles in performing his calculations. While the Act requires that an employer's existing and expected liability must be based upon Generally Accepted Accounting Principles (GAAP), GAAP does not require the use of an actuarial approach. Weirton Steel's GAAP liability for workers' compensation, as reflected in its December 31, 1995, audited balance sheet, was less than $20 million. Reasonable surety levels based on this figure closely approximate the surety levels previously posted by the Company.

Subsequent conversations with the Division served to heighten Weirton Steel's concern about how the Division intended to alter the prerequisites for self-insurance via implementation of the new Series 9 Regulations. First, the Company was advised that it would have to post surety which represented a 100% collateralization of its actuarially calculated workers' compensation liability. Weirton Steel was then informed that it was considered to be a "severe risk" because of the size of its undiscounted, unsecured contingent liabilities. Finally, Weirton Steel was told that its failure to satisfy the new surety requirement would result in its incurrence of a penalty by being placed in the Adverse Risk Plan or by being assessed a graduated

premium surcharge tax when the Series 9 Regulations took effect. Weirton Steel attempted to validate the Division's actuarial undiscounted assessment by engaging a national actuarial firm. The firm's calculations were significantly lower than the calculations of the Division. Notwithstanding the Company's and its retained actuary's disagreement with the Division's calculation of its contingent liability, a request from the Company for the data, assumptions and methodology utilized to arrive at that figure was never honored by the Division. It is apparent that the Division's actuarial calculation did not use Weirton Steel specific information or assumptions but, instead, used general industry information and assumptions. A further request for utilization of a "sliding scale" formula was denied because the same had not yet been developed.

Further contacts by the Division did not occur during the summer of 1996. In September 1996, Weirton Steel received notification that approval of an increased letter of credit in the amount of $4.1 million placed it in compliance with current surety requirements. Even if there is no resumption of this episode, Weirton Steel's experience demonstrates the opportunity for apparent abuse which exists within some portions of the Series 9 Regulations as presently drafted.

Given this history, Weirton Steel believes that it brings legitimate and very serious concerns to this process of promulgating rules. Although West Virginia's workers' compensation program should be operated in a fashion which is fiscally responsible, the insurance industry model which is the basis for the Series 9

Regulations should not be accepted on a wholesale basis. Fiscal responsibility for a privately-run insurance company is tied almost exclusively to minimizing exposure to risk. Fiscal responsibility within a state-run insurance entity like the Workers' Compensation Division should include not only risk avoidance, but also promotion of the State economy through enhancement of individual business enterprises. Self-insurance can provide such enhancement to larger business enterprises which are on sound financial footings. Accordingly, fiscal responsibility and promotion of individual business interests under the Series 9 Regulations are inconsistent only if the Regulations are allowed to create barriers which make self-insurance financially unattainable.

I am providing hereafter a more particular listing of items as representative of the concerns expressed above. Although these items reflect interests which are peculiar to Weirton Steel as an employer who self-insures its workers' compensation risk, some points also address issues which should be of concern to all West Virginia employers.

I. Adverse Risk Plan

Section 12.3 creates an Adverse Risk Plan which imposes additional premium taxes on employers with substandard performance levels. The stated purpose of this plan is to encourage these substandard performers to "adhere to the Act and the rules of the Division and improve their performance." A further purpose is to offset any adverse impact which employers with an elevated risk may have upon

other employers sharing risk in the same classification. Section 12.2 specifically authorizes the Division's assignment of self-insured employers to the Adverse Risk Plan. Such assignment is ill-designed to serve any of the purposes for which the Adverse Risk Plan is being developed.

Since self-insureds make all benefit payments directly to their employee-claimants, and because any failure to do so is "secured" by designated surety, even a poorly performing self-insured will not impact upon classification risk ratings. To the extent that the Adverse Risk Plan is intended to be an enforcement tool to encourage improved performance, it represents an extraordinarily harsh remedy when applied to a self-insured employer. When and if the Division determines that a self-insured employer's performance has become sufficiently diminished to justify corrective action, the remedies of requiring an increased surety or requiring the self-insured employer to become a subscriber under one of the rating plans is sufficient incentive to compel compliance. Assignment of a self-insured employer to the Adverse Risk Plan when these other remedies are available can be viewed as nothing less than a punitive measure which is tantamount to infliction of a civil penalty. The administrative hearing process provided by Series 7 would not likely pass a due process challenge for redressing challenges to imposition of civil penalties.

With regard to the 12 specific placement criteria addressed in Section 12.3, the following comments are submitted:

a. Criteria 5. Failure to maintain the proper level of premium tax deposit is redundant of Criteria 4 (default) and 6 (delinquency). Failure to maintain a proper level of premium tax deposit will lead to delinquency and/or default.

b. Criteria 7. A failure to post adequate surety should not be a consideration for assignment to the Adverse Risk Plan if the employer and the Division have agreed to a program for resolving such surety shortage.

c. Criteria 8. Employer failure to make payments to a medical provider or to a claimant should only be a valid criteria if such failure is predicated upon a proper pay order or a proper medical bill. Section 2.1(b) of Series 5 addresses this very issue. As drafted, Criteria 8 is inconsistent with this Series 5 provision.

d. Criteria 10. Employer failure to comply with applicable federal and state safety laws or regulations should not be subject to evaluation by the Division for two reasons: (1) the Division does not have experience in interpreting other organizations' safety laws or regulations; and (2) employers cannot rely upon compliance with federal and state safety laws or regulations to mitigate workers' compensation liability (i.e., if the employer cannot benefit from compliance, punishment for failure to comply represents an arbitrary application of the criteria).

e. Criteria 12. Allowing the Division to consider "such other factors or criteria considered by the Division to assess risk or ensure fairness and equity" places virtually unbounded discretion in the Division. While it is assumed that such discretion would be used responsibly, the fact that the regulation allows such

discretion to be used for punitive purposes creates an unacceptable level of potential harm if abuse occurs. If specific criteria other than those already included in this section are deemed necessary, they should be added by adoption of amendment to the rule.

Although this section goes to considerable length to explain how an employer can be assigned to the Adverse Risk Plan, it contains no language explaining how and when an employer will be removed from the Adverse Risk Plan. Indeed, subsection 12.7 suggests that once the Division assigns an employer to the Adverse Risk Plan "for a period . . . not to exceed one year," no corrective action by the employer can shorten that predetermined sentence. This serves as a disincentive for immediate corrective action and enhances the appearance of the Adverse Risk Plan as nothing more than a tool for imposing civil penalties.

Finally, this section provides no explanation regarding the standards, guidelines or criteria which will be utilized to determine premiums and/or penalties for employers assigned to the Adverse Risk Pool. Adoption of this section without such prior revelation is not "fair and equitable" since the affected parties are effectively precluded from giving input or comment.

II. Assignment to Rating Plans

Section 6.14 gives the Division authority to assign an employer at any time to any workers' compensation insurance plan offered under this rule. In the absence of any other limiting language, this provision becomes so discretionary as to

be arbitrary in its potential application. With the possible exception of assignment to the Adverse Risk Plan, no employer should be required to participate in a particular rating plan. Indeed, an employer should be allowed to select participation in any rating plan it deems appropriate for its business interests and for which it is qualified. This unrestricted authority to assign employers to insurance plans could even be interpreted as authorizing assignment of a self-insured employer to an insurance plan for previously unannounced or unsubstantiated reasons. This conflicts with the provisions of Section 13.8.d.

Even where properly articulated and noticed reasons exist for terminating the privilege of self-insurance, such termination should not be at the discretion of the Division. Since the privilege of self-insurance is granted by the Compensation Program's Performance Council, the privilege should not be subject to revocation without the Council's approval. If the privilege is deemed significant enough to warrant more than Division review for approval, its revocation is entitled to at least as much consideration.

III. Establishment of Security Levels for Self-Insured Employers

As drafted, Section 13.6 provides no parameters for measuring "all of its [a self-insured employer's] obligations to its employees and dependents." W. Va. Code § 23-2-9(a)(2)(B) currently provides that measurement of the full accrued value of an employer's existing and expected liability will be based upon Generally Accepted Accounting Principles (GAAP). Notwithstanding this statutory provision,

Section 13.6.d suggests that the Division will determine the required amount of security or bond based upon an actuarial calculation of liabilities. While GAAP permits an actuarial calculation, it does not require it. Nevertheless, the experience of Weirton Steel as outlined above suggests that this is in fact the methodology which the Division intends to utilize. The difference between the results of applying an actuarial methodology and the results of applying a non-actuarial methodology, both of which methodologies comply with GAAP, as evidenced by Weirton's prior calculations, can be significant by a factor of two or more. The resultant adverse impact on employers highlights concerns about the arbitrariness of this rule and its future application by the Division.

In addition to concerns about the measurement of a self-insured employer's liability, the method of then determining the level of required surety is equally unclear. If the wording of Section 13.6.b is intended to uniformally require a 100% collateralization of all of a self-insured employer's obligations under the Act, then it constitutes an unjustified requirement. Section 13.6.g provides that the Division may develop a sliding scale for determining amounts of security required of self-insured employers. This suggests that the rule does not contemplate 100% collateralization in all cases. In order to ensure such a reasonable result, language to that effect should be included in Section 13.6. Furthermore, design of a sliding scale should be required prior to the adoption of these Series 9 Regulations. Such a

requirement will permit review, discussion and possible refinement of any such sliding scale by all interested parties.

Finally, although Section 13.6.d states that an employer's excess liability insurance will be "considered" in establishing security requirements, this section should require that any liability which is covered by excess liability insurance will not be included in any calculation of a self-insured employer's obligations for which security is required. In the absence of such a requirement, the self-insured employer can be placed in the position of having redundant or double security (i.e., liabilities which are insured are also secured). The practice of the Division as revealed in the Weirton Steel experience related above is to require double coverage. Such a requirement is unnecessary, arbitrary and punitive. To the extent that there are concerns about the terms or reliability of excess insurance, standards can be developed which set acceptable parameters for such coverage.

IV. Compulsory Buyout of Self-Insured Liabilities

Section 13.11.a authorizes the Division, at its discretion, to require any self-insured employer to pay into the Fund an amount equal to the present value of all of its unpaid but awarded claims liabilities as determined by the Division. Amendments to W. Va. Code § 23-2-9 passed in 1995 eliminated the Division's authority to compel such an action. The authority to compel such action was previously provided by W. Va. Code § 23-2-9(d) which was amended and reenacted in 1995 as W. Va. Code § 23-2-9(h). The old language provided as follows:

> In any case under the provisions of this section that shall require the payment of compensation or benefits by an employer in periodical payments, and the nature of the case makes it possible to compute the present value of all future payments, the Commissioner may, in his or her discretion, at any time compute and permit or require to be paid into the workers' compensation fund an amount equal to the present value of all unpaid compensation for which liability exists . . . . (Emphasis added).

The 1995 amendments reenacted this language with the exception of the terminology underlined above. In light of this clear and purposeful action by the State Legislature, the compulsory authority contained in Section 13.11.a exceeds statutory authority and would represent a clear and arbitrary abuse of power if included in this rule when it is adopted.

V. Graduated Premium Tax

Section 13.8.d authorizes the Division to assess a graduated premium tax against an underinsured self-insurer to insure against additional risk. As with the Adverse Risk Plan and the determination of surety requirements for self-insured employers, this section provides no standards, guidelines or criteria which will be utilized to establish a graduated premium tax. Adoption of this section without first establishing these criteria is not "fair and equitable" since the affected parties are effectively precluded from giving input or comment. Application of this section without established criteria will lead to arbitrary results.

This provision should not apply to a self-insured employer who is complying with a program to which it and the Division have agreed for increasing required security levels. In addition to being unfair and punitive, such application would act as a disincentive to expeditious, orderly and amicable resolution of issues involving inadequate security.

VI. Period for Complying With Increased Surety

Section 13.6.e provides that an employer who is determined by the Division during its annual self-insurance review to have an inadequate or insufficient security or bond will have not more than 90 days to complete corrective action. In many instances, this may prove to be a totally inadequate period of time within which to resolve substantial shortfalls, especially where the Division and the employer disagree as to methodology and/or assessment standards. Although the employer may protest a Division order requiring an increase in its surety pursuant to § 85-9-20, Section 13.6.e may require posting of the additional surety prior to completion of the administrative hearing process.

By way of example, Weirton Steel refers to its experience with the Division as discussed above. If these regulations had been approved in June 1996 and the Division had pressed its position regarding increased surety requirements, the Company could have been placed in the position of having to virtually eliminate its short-term borrowing capacity in order to provide surety within 90 days or run the very real risk of being penalized through assignment to the Adverse Risk Fund,

assessment of a graduated premium and/or revocation of its self-insurance privilege. A 90-day compliance period under these circumstances seems arbitrary and unfair when the Division itself does not believe that it can resolve the Fund's current deficit in less than 30 years. Many of the same economic forces which prevent the Division from correcting its problems within 90 days would prevent an individual employer from doing so. Accordingly, the 90-day requirement contained in this section does not comport with administration of a "fair and equitable" system for determining risk and pricing.

VII. Renewal Application Fee

Section 13.8 requires payment of a $500 renewal processing fee when a self-insured employer files its annual renewal application. Since the self-insured employer is already paying an annual administrative fee, this renewal processing fee would appear to be duplicative. There does not seem to be any basis for singling out this particular administrative function for assessment of a special fee as opposed to thousands of other administrative functions which are performed by Division personnel for both subscribers and self-insurers. While processing of a self-insured employer's renewal application is not a task that is common to all employers, there are many administrative tasks performed for subscribers which are not required for self-insurers (e.g., annual calculation of experience modification factors). Accordingly, this self-insurance renewal fee takes on the appearance of being an arbitrary assessment.

VIII. Assumption of Experience Modification Factors

Section 17.3.a requires a successor employer to assume a predecessor employer's experience modification factor if it is greater than one (unfavorable) and if the successor employer does not already have an experience modification factor in that same class. However, if the predecessor employer's experience modification factor is less than one (favorable), a similarly situated successor employer is not permitted to assume it. This lack of evenhandedness in dealing with employers cannot be explained by risk or fiscal analysis. Indeed, this approach does not comport with administration of a fair and equitable system for determining risk and pricing coverage. This provision must be considered arbitrary and punitive.

IX. Independent Contractor Criteria

Section 6.1.a sets forth factors which will be considered in determining whether a business is an independent contractor. The second factor listed indicates that if an individual receives training from the business for whom he is working, this will be an indication that he is an employee and not an independent contractor. Such an interpretation of "training" may provide a disincentive for employers to provide safety training to independent contractors or to take steps to ensure that independent contractors have received appropriate safety training. This in turn may lead to unnecessary injuries. This is contrary to the espoused purposes of our State's workers' compensation program.

X. Experience Period

Section 7.4.c requires that the experience period used to determine experience modification factors will be the three fiscal years prior to the fiscal year during which the annual rate calculations are made. Utilizing this formula and assuming its adoption this year, claims that have a date of injury prior to July 1, 1992, would not be part of the rating system. If these claims are not going to impact upon an employer's modification factor, there will be a substantially reduced incentive to manage or defend such claims. In the absence of management or defense, it may be expected that the cost associated with such claims will rise since the Division has not, and most likely will not, intercede to provide a defense in such uncontested claims. The net result will likely be an increased Fund deficit, or an increase in employer premiums to cover the additional losses. Neither of these results is acceptable.

The situation is exacerbated by the fact that there are many unresolved permanent total disability cases with dates of injury which precede July 1, 1992. This number was substantially increased by the West Virginia Supreme Court's recent *Blankenship* decision. Although this Company is not privy to figures which reflect the potential losses associated with entry of permanent total disability awards in undefended claims with dates of injury prior to July 1, 1992, it is feared that this number may reach $1 billion. Such an addition to the Fund's deficit has the potential to be ruinous to present efforts to provide fiscal solvency.

While this issue is not one that directly impacts on self-insured employers, its impact will most certainly be felt indirectly to the extent that an increased deficit impacts upon administrative and other fees which are predicated upon base rates. Additionally, any further erosion of the fiscal integrity of the West Virginia Workers' Compensation Fund will provide further disincentive to the location, maintenance and expansion of business in this State. Such a circumstance cripples the economic opportunities for existing businesses whether they be subscribers or self-insurers.

The comments set forth above are intended to be constructive and instructive. Although the Compensation Program's Performance Council stated on several occasions that it intended to conduct ad hoc committee meetings of "stakeholders" to facilitate their contributions to the promulgation of the Series 9 Regulations, those meetings never took place. Had those meetings occurred, the drafters of the Series 9 Regulations could have weighed the merit of such stakeholder contributions in an unhurried fashion and included the results in the current draft of the Regulations. It is hoped that self-imposed time pressures will neither prevent mature consideration of the comments of Weirton Steel and others nor detract from formulation of proper responses thereto. Such responses can and should include further revision, clarification and enhancement of the current draft of the Series 9 Regulations.

Your consideration of Weirton Steel's comments is greatly appreciated. If I may provide additional assistance or clarification with regard to the contents of this letter, please do not hesitate to contact me.

Very truly yours,

David L. Robertson

cc: Ed Staats (WCD)
Ed Burdette (WCD)
Gene Bailey (CPPC)
Thad Epps (CPPC)
Chris Jarrett (CPPC)
David Harris (CPPC)

BLUEFIELD REGIONAL MEDICAL CENTER

October 3, 1996

96 OCT -9 AM 10:19
DEP-LEGAL DIVISION

Randall B Sutter, Counsel
Legal Services
Worker's Compensation Division
P.O. Box 3922
Charleston, WV. 25339-3929

Dear. Mr. Sutter:

I am writing in reference to the proposed rule changes for West Virginia 85 C.S.R. 9, "Risk Management" * per W.Va. Code, 21A-3-7 (c), group retrospective rating plan. I have reviewed the proposed rule and would like to request that changes in the following sections be accomplished:

- Section 10.5.b. The application period be shortened to one (1) quarter prior to the beginning of the coverage period.
- Section 10.5.c. Timely filing period for group application be reduced to forty five (45) days prior to the end of a coverage period.
- Section 10.5.d. A reasonable period of time should be allowed for any member of the group to rescind an application in the event a key member or members has departed from the group, thereby revising the entire groups rating.

Your assistance in reviewing and modifying the sections which I have referenced would be greatly appreciated. Thank you for your assistance in this matter.

Sincerely,

Nick Samilo, Vice President of Finance BRMC

cc: Mr. Eugene Pawlowski, President BRMC
Ms. Betty Schrader, Director Human Resources BRMC
Mr. G. Perkins, Esquire Katz,Kantor,Perkins

HOME BUILDERS ASSOCIATION OF WEST VIRGINIA

A MEMBER OF THE NATIONAL ASSOCIATION OF HOME BUILDERS

700 Virginia Street, W. • P.O. Box 6250 • Charleston, WV 25362-0250 • Phone: (304) 342-5176 • FAX: (304) 342-5177
http://www.westvirginia.com/hba

October 8, 1996

Mr. Randy Suter
Legal Services Division
Workers' Compensation Division
P.O. Box 3922

Re: Series 9 Rules

96 OCT -9 AM 7:52
DEP-LEGAL DIVISION

Dear Randy:

This is to advise you that I am the General Counsel for the Home Builders Association of West Virginia and that this letter contains our comments and concerns with respect to the proposed Title 85, Series 9, Rules and Regulations entitled "Risk Management."

By way of background, the Home Builders Association of West Virginia is made up mainly of small businesses engaged in the construction of or remodeling of residential structures for single family and multi-family purposes. For the most part, our builder members would employ between two and fifteen employees on the average depending upon the season of the year. However, some of our members also engage in various associated fields of business, such as banks, building supply businesses, utility companies, real estate sales companies, mortgage companies, interior design businesses and a variety of other businesses.

However, because the primary purpose for the Association is to promote residential building and because the associate members are not a homogeneous group, my comments will be directed primarily at the group and individual retrospective plans provisions of the proposed rules and regulations as they impact and effect our primary members. The self-insurance or deductible plans provisions will most certainly not be applicable to or have any relevance to our builder members.

I have had access to and have reviewed the comments of both Employers Service Corporation and those submitted by Frank Gates Service Corporation and I am in general agreement with the comments of both of those organizations.

Specifically, I was greatly concerned with the $500,000.00 minimum required to establish a group as set out in 10.2d. It is my firm belief that a dollar figure should not be the criteria for group recognition, but instead the criteria should be the nature of the group and/or their experience record with the Fund, as well as historical profile for a majority of the individual members expected to make up the group. Further consideration could be given as to the make-up of the sponsoring organization governing body. The reason I suggest this is that small businesses are in the greatest need of not only spreading the cost of hazard identification and safety training, but are the least likely group to be able to afford true risk management if the individual small business cannot be in a group. Therefore, it should be the objective of the rules and regulations to promote as many groups as it possibly can to truly promote hazard identification and safety training for both group rating plans, as well as small businesses individually.

I fully agree with the position taken by Employers Service Corporation, that aside from the assignment by the Division of the adverse risk plan, that no employer should be assigned by the Fund to any other category or plan contemplated by the rules unless the employer chooses to be assigned to that category or plan. Each employer should be allowed to opt out of any plan if the employer believes it is in his best interest to do so. Each employer should be able to have his numbers crunched in each category or plan and decide which plan best suits that employer. No employer should be required to pay his whole years premium up front just because his premiums are low. (14.7a) Even private insurance companies allow monthly or quarterly premiums and if the Fund will require all such employers to pay up front, then refunds should be made or credited at the end of each quarter when the actual premium costs are known and there should be no penalty or interest if estimates are made based upon 100% of prior quarterly premiums.

It is not known to this writer whether there is a legitimate financial reason to set a minimum premium of $25,000.00 for eligibility of the individual retrospective rating plan as required by 11.4, but it is obvious that this will eliminate a large number of employers from consideration of this plan.

Under 11.5b an application fee of $2,500.00 is required. The rule does not specify whether this is only required for the original application or whether it will be required for all subsequent applications. This application fee is not required for all other plans and it is not clear why this high application fee would be charged for an individual retrospective plan, but not under a group plan. It does not specify why the fee is required or what it will be used for.

Under the group retrospective plan, the joint liability of the group is not specifically defined as to how or when it will be assessed to the group or how or when the group must pay the liability. In order for any group to determine whether or not the plan would be advantageous this joint liability should be specifically defined. The general language is far too broad, leaves too much unstated to advise the group of what will be covered and how and when it will be assessed and collected. For instance, if one employer in the group defaults will the Fund first try and collect from the defaulting employer or will it immediately assess the group? If one employer defaults would the group lose its common law defenses as set forth in Chapter 23, Article 2, Section 8? This needs specific definition.

I am extremely concerned with tenor of the entire rules and regulations which gives the Division an unlimited and fettered authority to invade the privacy of practically every employer in this state to gather every type of private information the Division chooses to demand without evidently any showing of probable cause to suspect that any employer has failed to provide any information the Fund may wish to demand. For instance, under 3.2, assets are defined to include goodwill, business assets, customers, clients, contracts, access to leases, etc. Therefore, for no reason at all the Division could demand and receive customer lists, inventory lists, as well as cost figures. If this information were leaked by the Division, for instance, to competitors, it could destroy the business. I, therefore, believe that a special provision should be added to the rules to limit the kinds of information the Division can obtain to include only such information as is absolutely necessary to determine the risk of loss to the Division and further provide that all proprietary information obtained by the Division is privileged information, which cannot be divulged to any person, corporation or entity not specifically authorized by statute to have access to such information and any

employee of the Division who divulges such information to any unauthorized source shall be guilty of a felony and imprisoned for not less than one year, nor more than five years.

Section 14 in general, in my opinion, constitutes unconstitutional overreaching and is extremely broad in its tenor and breadth. Like the IRS, if the Division engages in investigations or any individual business to the extent contemplated by this section of the rule, the mere fact of such an investigation will damage the business credibility with customers, banks, investors, suppliers, insurers and others contacted. No private insurance company would engage in such wholesale and all inclusive investigations of a potential customer, because if they did they would have no customers because businesses would not voluntarily choose to have this kind of investigation conducted. Just because the Division has all employers in this state captive by the requirement to have coverage does not mean that the Division is entitled to exercise such power. This section should be toned down and only legitimate inquiries be allowed to be conducted and only if information supplied by the employer is insufficient to make an informed decision as to the credit worthiness of the employer's business should the Division be allowed to contact those sources set forth in 14.41 (1) through (11), which are not directly provided by the employer. A probable cause showing should be required before such an investigation is instigated to prevent the potential harm to the employer by such an investigation.

The Home Builders Association of West Virginia appreciates the opportunity to be able to comment on these most important rules and hope that our comments will be considered before the final rules are adopted, as they will have a significant impact on all of our members for many years to come.

Sincerely,

HOME BUILDERS ASSOCIATION
of West Virginia

Prepared by,

W.F. Richmond, Jr.
General Counsel
(304) 255-4091

Gatewood PRODUCTS, INC.

Executive Offices
P.O. Box 766
Parkersburg, WV 26102
(304) 422-3103

October 4, 1996

Mr. Randy Suter
Legal Services Division
P.O. Box 3922
Charleston, WV 25339-3922

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

Dear Randy:

As an active corporation in this state of West Virginia, GATEWOOD PRODUCTS, INC. would like to take this opportunity to submit our comments on the proposed rule named above.

Michael Idleman, Director of Risk Management at Employers Service, has done an excellent job at representing employers such as ourselves in their exemplary comments to your Legal Services Division. We would like to expand on the "Employer's" point of view.

It is not to our advantage to be *assigned* to an "Alternative Rating Plan". It's understandable that the Fund may *suggest* or *reccommend* that a certain plan may be beneficial; however, it should be the company's choice. Without personal knowledge of each company, there may be many factors that the Division is not aware of that may keep them from making the best decision. Additionally, at this time, these option plans do not seem to be fully developed:

Deductible Plan. Section 9 does not list either the amount of the initial fee, or the resulting cost reduction in premiums. How could anyone make a decision in this arena without knowing what will be gained from the burden of a deductible? Further, we feel it is inappropriate to include deductibles paid by the employer in calculating future premiums; this action appears to dilute the attractiveness of a deductible plan.

Group Retrospective Plan. It is unclear at this point whether this type of plan helps or hinders an employer. The nebulous or sometimes absent definitions and the complexity of the calculations are confusing at the very least. There has been word that further education seminars will be held pertaining to the new Series 9 Rules; this would be most helpful, especially prior to the Division assigning or accepting applications for plans such as this one.

Adverse Risk Plan. We believe this plan has the potential to severely increase premiums, thereby possibly causing companies to choose sites other than West Virginia to locate their initial or future expanded business. This could cause an overall loss of jobs. A more practical approach, we feel, would be to implement the QLMP program.

We are very concerned that the proposed QLMP program was handled separately from this issue, and seemingly without much, if any, public notice. It appears that if an approved safety plan could be successfully implemented, we would have a win-win situation. First, our employees would be safer. Second, our employers would enjoy better ratings. Therefore, the Division would process less claims. Every Alternative Rating Plan mentioned would be greatly affected by improved safety. Since the QLMP plan has already been delayed once, it is important that this proactive feature not be lost in the ether.

OTHER CONCERNS:

We believe the proposed Tax Liability Rating should not be based on any criteria other than performance in paying Workers' Compensation premiums. If a company that has always made timely and accurate premium payments is classified with a "C" rating, as vaguely addressed in Section 14.5, this would result in weekly deposits - as compared to possible monthly deposits - resulting in a costly hardship. In addition, we feel it's too harsh to impose interest and penalties if there is an underpayment of estimated premium taxes. A company in a mode of expansion may find themselves in such a situation. It appears this process would inhibit a company from increasing jobs in the state.

As with any state-regulated plan, installation and maintenance could cause an increased administrative burden, and would have the potential of costing the WV taxpayers' even more.

Section 4.6 states that "...only one risk classification is permitted per policy account." In 1982, when the Workers' Compensation Fund changed from a multi-rate system to a single-rate system, I sent in an appeal to allow this corporation 2 separate

rates. They approved a wood manufacturing rate for our Gatewood Divison, and a wholesale stores rate for our Ampak and Atlas Steel divisions, which have less risk in their workplace environments. It's imperative that we be allowed to maintain these separate rates.

This revamped system will take alot of hard work, cooperation, and perhaps even forced participation from all employers of this state. Will this aggressive new program get the Workers' Compensation Fund out of debt? If so, when is this expected to happen?

In addition to revamping the current rating system, we feel issues other than administrative contribute to the problem. For instance, shouldn't providers be given more regulations governing lost time at work....shouldn't medical costs be controlled by using cost-managed type plans such as an HMO or PPO?

One of our main goals on which we have chosen to focus is to improve our safety programs and prevent injuries from happening. We were gearing ourselves to conform with state plans for the QLMP program, so that one of the Alternative Rating Plans would become our best solution to managing our Workers' Compensation costs. The best scenario for the Workers Compensation Fund is for *everyone* to work together: Employees, Employers, Health Providers, TPA's and Fund Administrators alike.

Thank you for this opportunity to contribute comments on the proposed "Risk Management" Rule.

Sincerely,

Carol L. Myers

Carol L. Myers
Corporate Comptroller

cc: E.R. Gateman
D. Booth
K. Russell
Mr. Michael Idleman - Employers Service Corporation
Mr. Ed Burdette - Workers' Compensation Division

BOWLES RICE
MCDAVID GRAFF & LOVE

ATTORNEYS AT LAW

1000 TECHNOLOGY DRIVE, SUITE 1330
FAIRMONT, WEST VIRGINIA 26554
TELEPHONE 304-368-4000

105 W. BURKE STREET
MARTINSBURG, WEST VIRGINIA 25401
TELEPHONE 304-263-0836

206 SPRUCE STREET
MORGANTOWN, WEST VIRGINIA 26505
TELEPHONE 304-284-4013

16TH FLOOR HUNTINGTON SQUARE • LEE STREET
POST OFFICE BOX 1386
CHARLESTON, WEST VIRGINIA 25325-1386
TELEPHONE 304-347-1100
FACSIMILE 304-343-2867

601 AVERY STREET
PARKERSBURG, WEST VIRGINIA 26102
TELEPHONE 304-485-8500

12TH FLOOR VINE CENTER TOWER
LEXINGTON, KENTUCKY 40507
TELEPHONE 606-225-8700

900 HEYBURN BUILDING
LOUISVILLE, KENTUCKY 40202
TELEPHONE 502-589-0500

WRITER'S DIRECT DIAL NUMBER

(304) 347-1115

E-MAIL

ssmith@bowlesrice.com

October 8, 1996

Randall B. Suter, Esquire
Bureau of Employment Programs/Legal Services Division
Workers' Compensation Division
Post Office Box 3922
Charleston, West Virginia 25339-3922

Re: Title 85, Exempt Legislative Rules, Series 9, Risk Management

Dear Mr. Suter:

Please consider these comments concerning the above-referenced regulations.

By way of general comments, on behalf of the employers and industry groups we represent:

1) I appreciate the Division's decision to propose new policy options to employers beyond the two alternatives historically offered in our monopolistic system. These new alternatives will allow employers more flexibility and control over their costs, and the efforts of the Chief Financial Officer and other appropriate personnel are visionary.

2) Although I am nervous about the ultimate results for individual employers based upon the accuracy of reserving methods and the ease of transition, I believe assessing premiums based upon claims incurred is a superior system. I trust the Division is prepared for the change and that the Compensation Programs Performance Council will carefully monitor whether the new system is a better reflection of current safety records.

3) Please consider my specific suggestions as proposed revisions rather than "comments." I have not noted all of my areas of agreement with the rules and do not want the context to appear that my only comments are negative. However, I hope you will seriously consider my suggested changes, as I strongly recommend each of them.

4) No one can anticipate all scenarios and contingencies. I have a growing sense that employees at the Division have been instructed that employers are the enemy and always act

intentionally and maliciously when premium disputes arise. The consistent use of "shall" in the regulations reflects this punitive attitude. "May" reflects a flexibility to evaluate the needs of both the customer and the Fund in making decisions, and I have suggested this change where appropriate.

5) My proposed revisions are as follows:

§85-9-3. Definitions.

3.10.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 §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.

[COMMENT: Oftentimes new employers applying for workers' compensation coverage may make inadvertent errors in filing requirements with the number of government agencies involved in starting a new business, or may not consider accountants and engineers involved in preliminary matters prior to start up as "employees" within the meaning of the Workers' Compensation Act. If these inadvertent errors occur, the Division should have the discretion to permit the employer coverage without being stripped of common law defenses. Otherwise, our economic development efforts will meet new employers with an inappropriate lack of flexibility.]

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.

[COMMENT: The suggested addition protects employers from being declared delinquent if pay orders issued are later discovered to have been issued in error.]

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

[COMMENT: This provision is too broad and could be construed to include in my own law firm, for example, the employee who has been designated as our head messenger or copy center supervisor - both of whom perform important functions in determining how we conduct our business.]

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

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 five (5) years 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.

[COMMENT: The addition suggested makes this section consistent with §85-9-4.1.]

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~~ at other reasonable locations 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.

[COMMENT: The Division should be required to conduct inspections at locations considered reasonably convenient to the employer, given that the employer's records which must be made available for inspection may be voluminous.]

4.6.b.B. The employee(s) are not ~~and can not be~~ used interchangeably between the two locations; and . . .

[COMMENT: The "and can not be" language is too open to interpretation and litigation. Can not most personnel potentially be trained to do another job in today's society? The question should be simply what the company is doing to stay with the facts.]

4.6.c. When the division has assigned multiple classifications for an employer's operations, the employer shall keep an appropriate record for five (5) years 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.

[COMMENT: The addition suggested makes this section consistent with §85-9-4.1.]

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~~ may 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; provided, however, that the Division shall not make retroactive changes for a period longer than five (5) years. In determining whether a retroactive demand for payment is made, the Division shall consider whether the employer voluntarily raised the issue or acted willfully in making a deficient disclosure.

[COMMENT: Records are only required to be maintained for five (5) years. To claim delinquencies prior to that time may require an employer to defend without adequate records. There are over ninety (90) classifications and quarterly notices do not adequately advise employers either of their current class or information about other classifications. If the employer's being misclassified is the result of excusable confusion or if the employer voluntarily notifies the Division of the error, the Division should have the discretion to act appropriately and employers are encouraged to report errors once discovered.]

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 use the refund amount to purchase additional security or annuities to reduce the undersecured employer's risk to the division.~~

[COMMENT: If there is a security shortage, the employer should be properly advised and, as appropriate, required to address the shortage. The Division should not be permitted to use the employer's refund to make internal financial decisions on behalf of the employer related to how its security requirements are met.]

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~~ if requested by the employer, and shall be 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.

[COMMENT: As originally drafted, the right to a hearing was entirely within the discretion of the Division. The suggested addition allows the employer the right to request a hearing if the employer's own account is being audited.]

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 with proper notice at any reasonable 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.

§85.9.6. Employees covered; employers required to subscribe; coverage elections; assignment.

~~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 any time the service provider wishes.~~

6.1.a. Independent contractor. Independent contractors are not considered to be employees unless the person or persons for whom the services are performed retains the right to control and supervise the work in question. This control refers not only to the result to be accomplished by the work but also the means and details by which that result is accomplished.

[COMMENT: The source of this rule as proposed is undoubtedly the list of twenty factors compiled over the years by the Internal Revenue Service ("IRS") and the Social Security Administration, and eventually published in Rev. Rul. 87-41, 1987-1 C.B. 296 (the "Twenty Factor Test"). However, in a draft of training materials for IRS auditors that was released to the public by the IRS in March, 1996, the IRS emphasizes that "[r]emember, however, that this Twenty Factor Test is an analytical tool and not the legal control test used for determining worker status." These training materials and other recent actions by the IRS reflect an evolution to clarify the standards for independent contractors under the Internal Revenue Code. Increasingly, the IRS is recognizing that businesses vary greatly and that no strict rules can govern who is an independent contractor in every situation. Moreover, the IRS has acknowledged that some factors that were relevant in the past are no longer

persuasive. Thus, I believe it is not prudent for the division to codify the Twenty Factor Test in § 85-9-6.1.a.

Avoiding the Twenty Factor Test is also consistent with Barkeley v. State Workmen's Compensation Commissioner, 164 W.Va. 777, 266 S.E.2d 456 (1980), in which the Supreme Court of Appeals affirmed the following standard:

> If the right to control or supervise the work in question is retained by the person for whom the work is being done, the person doing the work is an employee and not an independent contractor, and the determining factor in connection with this matter is not the use of such right of control or supervision but the existence thereof in the person for whom the work is being done.

Barkeley, 164 W.Va. at 779, 266 S.E.2d at 458 (citing Myers v. Workmen's Compensation Commissioner, 150 W.Va. 563, 148 S.E.2d 664 (1966)). The Barkeley court also noted that "[t]o ascertain whether the right to control exists, each case must be resolved on its own facts. No single feature of the relationship is controlling and all factors must be considered." Id. Codifying the Twenty Factor Test would thus not only be inconsistent with developing federal tax law but also be at odds with the holding in the Barkeley case.

The suggested alternative avoids the Twenty Factor Test and also incorporates more appropriate language under the current federal tax regulations.]

6.2.d. An employer, which is a corporation or association, of up to eight (8) employees, who are corporate officers or members of the board of directors of the association or corporation. Such officers shall consist of:

6.2.d.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~~ Those persons whom shall be elected by a board of directors at such time and in such manner as prescribed by its bylaws; and

[COMMENT: The Division may set a reasonable maximum number of employees to be exempted, but should not require employers to use certain titles for their officers or make other internal corporate or association decisions. What if the president has another title like "executive director," or the secretary and treasurer positions are combined in one person?]

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

6.15. 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.

[COMMENT: Unless this suggested change is made, all correspondence in litigated claims would also be included in this requirement as the Division is a party to workers' compensation litigation.]

§85-9-7. Ratemaking.

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

[COMMENT: Note that if this subsection is implemented and changes the system to assess liability only for claims incurred in a three-year period, there will be millions of dollars in claims liability "dumped" on the Fund because employers will have no incentive to defend.]

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;

7.6.b. Individual experience modification factor determination information and the effort 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; and

7.6.d. The employer's industry classification and a brief description of that classification.

[COMMENT: Information currently sent to employers only contains a four-digit code and does not include the name or description. Of the employer's industry classification so that errors can be discovered.]

9.4.e.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 begin the application process again and may be required to pay the nonrefundable application processing fee.

[COMMENT: If negotiations are ongoing or an error occurs or a notice is lost in the mail, the Division should be permitted to allow additional time or to waive payment of a new application fee.]

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.

[COMMENT: The suggested addition makes this subsection consistent with a later paragraph which permits the Division to develop a sliding scale to consider an employer's financial stability in setting security requirements.]

9.7.d. All deductible contracts entered between the division and employers shall be in the form of ~~reimbursable deductibles~~ limited self-insurance. The ~~division~~ employer 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~~ up to the deductible as a self-insured employer, based upon the issuance of proper pay orders. All incurred costs up to the deductible limit shall not be utilized to determine the employer's experience modification factor notwithstanding the employer's payment of deductible amounts.

[COMMENT: Unless the suggested changes are made, the deductible plan will not be attractive to employers because premium costs over and above deductibles will not be reduced to reflect out-of-pocket payments.]

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~~ at least thirty (30) days prior to the suspension or termination and an opportunity to respond in writing or at a hearing. Suspension or termination shall take effect even with the date of notice if the employer fails to show good cause or otherwise satisfactorily prove that the allegation of failure to comply was in error.

the employer fails to show good cause or otherwise satisfactorily prove that the allegation of failure to comply was in error.

[COMMENT: The suggested changes eliminate an automatic suspension if an error has been made in charging an employer with failure to comply.]

§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.~~

[COMMENT: Assignment by the Division should only be to the guaranteed cost plan.]

11.10. Computations.

11.10.a. First computation of retrospective premium. ~~As soon as practicable~~ Within thirty (30) days 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.

§85-9-12. Adverse risk plan.

12.3. Placement criteria.

~~(9) Whether the employer is not in compliance with any other rules or programs of the division;~~

~~(10) Whether the employer has been cited for failure to comply with any applicable federal or state safety laws or regulations;~~

~~(11)~~ (9) 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)~~ (10) Such other factors or criteria considered necessary by the division to adequately assess risk or insure fairness and equity of the rate making system.

[COMMENT: The subparagraphs stricken are too vague and open to interpretation. The workers' compensation system should not be punitive based upon minor infractions or subject to more and more litigation over phrases like "any applicable regulation" or "any other rule or program."]

§85-9-13. Self insurance.

13.3. Reconciliation and settlement of applicant's account.

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 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~~ may be reduced by the amount of any excess premiums.

[COMMENT: The language in this subsection requires the Division to consider the employer's excess premiums paid in determining the security required as a self-insured employer, but then provides no mechanism to do so. The suggested change permits the Division discretion to grant a credit in appropriate cases.]

13.4. Elections by employers applying for self-insurance.

13.4.a.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.

13.6. Security and bond.

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 any time 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 shall require the employer to post additional or supplemental security or bond to meet these obligations, subject to subsection 13.6.g. of this rule.

13.6.e.A. If the division determines that a self-insured employer's securities or bonds are inadequate or insufficient, 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, subject to subsection 13.6.g. of this rule.

13.6.e.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) for employers actively conducting business in the state. 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 fro 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.

[COMMENT: For self-insured employers whose business in the state ceased years ago, security requirements may appropriately be reduced.]

13.6.g. In accordance with the provisions of subsection 7.2. on or before the effective date of these rules the division ~~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.

[COMMENT: This scale has been announced by the Division at industry meetings and should be in place when these rules take effect.]

13.7. Second injury reserve of the surplus fund.

13.7.b.A. The division shall assign base premium tax rates to each industrial class to reflect ~~the~~ an appropriate 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.

[COMMENT: If a class has an extraordinary hike or plunge in its experience in a single year, the Division should be permitted some discretion in setting rates, as in any insurance setting.]

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 relevant accounting records, books, records, papers, operations and documents in the possession or control of the employer.

13.8.c. The division may suspend or terminate an employer's self-insurance status or assign the employer to ~~another~~ the guaranteed cost 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 reasonable written notice of the suspension, termination or assignment, and shall provide the right to a hearing, if requested, prior to taking action.

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, 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~~ Division may enter into an agreement with the employer to bring the security to an appropriate level within a reasonable time.

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 significantly 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 relevant language in an executed contract causing the modification, and the names of other employers and/or businesses affected by the modification.

[COMMENT: Employers regularly hire new employees or reorganize departments that may affect payroll and, therefore, workers' compensation liability. The suggested change eliminates unnecessary paperwork.]

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~~ may 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.

[COMMENT: The new operation may be a separate subsidiary that chooses an option other than self-insurance.]

13.10. Voluntary termination of self-insured status.

13.10.b. A self-insured employer must provide the division with written notice thirty (30) days prior to termination if its 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-insurance

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, the employer must pay a fee equal to the greater of $5,000.00 or the costs actually incurred.~~

[COMMENT: A buy-out should be final unless there is an agreement otherwise, as the employer has no control over the defense of the claims once a buy-out occurs.]

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. the employer must pay a fee equal to the greater of $5,000.00 or the costs actually incurred.~~

13.10.c.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 relevant portions of the contract

to give effect to such an agreement, but shall do so if it is reasonable and meets the fiduciary requirements of the Fund.

13.10.d.A. If a completed copy of the relevant portions 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~~ and 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 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.

13.10.d.B. If a complete copy of the relevant portions 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.

[COMMENT: The Division may request to review entire contracts, but filing entire copies is overly burdensome and invites Freedom of Information Act requests about sensitive issues such as price that the Division cannot always protect employers against.]

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

13.11.a. 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.

[COMMENT: Why should a self-insured employer in good standing be required to pay its entire liability to the Division with no cause other than the Division's discretion?]

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

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

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).~~

[COMMENT: Should this subsection relate to 1996 only, or be stated more generally?]

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

[COMMENT: As long as the Division has the right to act, these regulations should recognize that occasionally mail is lost or errors are committed.]

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

14.7.a.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~~ may upon request or may be required to pay premium taxes on a frequency less than quarterly ~~so that the employer does not~~ if good cause exists to believe the employer is a credit risk and will likely exceed preestablished tax liability limits.

[COMMENT: The suggested changes permit employers the option to request monthly payments, and limits this requirement only to those employers who are found to be credit risks.]

14.7.c. Deposit rules. On an annual basis, the division shall determine pursuant to subsection 14.7.b. whether an employer is a quarterly depositor, monthly depositor, bi-weekly

depositor, or a weekly depositor. In determining the depositor category for those employers found to be credit risks, 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.

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, and individual employers shall be provided an appropriate opportunity to respond and to a hearing, if appropriate.

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 I 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.

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

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 for a period of five (5) years.

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 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 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 within ninety (90) days of the filing of the application.

[COMMENT: Payment requirements for the Division should be reasonable, given payment requirements for employers.]

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

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 in West Virginia 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.

17.3.a. 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.

17.3.a.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.~~

[COMMENT: This provision is unjust.]

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.

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

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 W. Va. Code §23-2-13.

[COMMENT: Once these regulations are effective, the Division may be subject to challenge if the provisions are not implemented.]

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

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.~~

§85-9-21. Information.

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

Thank you for considering these comments.

Very truly yours,

Sarah E. Smith

SES/cjt
cc: Mr. Gene Bailey
Mr. Thad Epps
Mr. David Harris
Mr. Chris Jarrett
Mr. Edward Staats
Mr. John E. Burdette
Mr. Thomas A. Winner
Ms. Ruth M. Lemmon

October 8, 1996

HAND DELIVERY

Randy Suter, Esq.
Legal Services Division
Workers' Compensation Division
4700 MacCorkle Avenue, S.E.
Charleston, WV 25304

RE: Comments on Behalf of the West Virginia Self-Insurers Association to Proposed Rule 85 CSR Series 9 "Risk Management"

Dear Mr. Suter:

Pursuant to the public notice, enclosed on behalf of the West Virginia Self-Insurers Association are its comments to proposed rule 85 CSR Series 9 "Risk Management." We look forward to the opportunity of reviewing with you WVSIA's comments and concerns, as well as those offered by other business associations and interested parties.

Very truly yours,

Henry C. Bowen
Executive Secretary

HCB/blf
enclosure
WVS/22351

West Virginia
Self-Insurers
Association
P.O. Box 1573
Charleston
West Virginia
25326

COMMENTS ON BEHALF OF THE WEST VIRGINIA SELF-INSURERS ASSOCIATION TO PROPOSED RULE 85 CSR SERIES 9 "RISK MANAGEMENT"

The West Virginia Self-Insurers Association (hereinafter "WVSIA" or the "Association") has, by its Board of Managers, reviewed the proposed regulations titled Series 9 "Risk Management," and, as set forth below, offers its comments in hopefully a constructive manner. Section I contains a general overview of WVSIA's concerns, Section II contains the Association's priority comments, and Section III contains other relevant comment on provisions that merit revision but that may not pertain directly to the WVSIA.

SECTION I - GENERAL OVERVIEW

The WVSIA commends the Division for its excellent staff presentations at the public hearings which commenced on September 9, 1996 and ended on October 3, 1996. The public hearing presentation material provided a very helpful framework for the Division to summarize its future plans for ratemaking; alternative products (plans); field audits; credit management; and loss prevention. Very little of the presentations focused directly on employers authorized to self-insure their workers' compensation obligations. The WVSIA believes that employers authorized to self-insure and direct pay their benefits promote sound policies and employ best practices in the administration of the workers' compensation programs. Dramatic changes have occurred within the Division and the costs borne by subscriber employers have increased from an estimated premium of $180 million in 1985 to an estimated $470 million at the close of fiscal year 1996, June 30, 1996. Prior to the

passage of Senate Bill 250, claims for permanent total disability were granted at levels many times that experienced in states with similar employment profiles and industries. Unfortunately, the Supreme Court of Appeals' decision in the Blankenship case will compel the Division and Office of Judges to apply the old law to large numbers of claims in which there are strong likelihoods of permanent total disability awards which will be assessed against the Division or against self-insurers directly. Obviously, the actuarial estimation of the unfunded liability after enactment of Senate Bill 250 and amortization plan to reduce the deficit must be reassessed to account for the anticipated impact of Blankenship on the Division and self-insurers. The salutary purpose of workers' compensation has always been to help injured employees recover from injuries and to return them to work. In those instances where work-related injuries are the reason individuals cannot return to work, benefits to replace their lost wages are both necessary and proper. However, workers' compensation should not have been an incentive for individuals not to return to work and when a system allows compensation for non-work-related conditions, it is not functioning appropriately.

Senate Bill 250 contained changes designed toward recovery, rehabilitation and return to work. Loss prevention programs can and do make a difference in preventing injuries and should provide a long-term basis to prevent injuries from industrial accidents and lead to long-term benefits for all employers, employees, and the Division. However, the West Virginia workers' compensation statute contains anomalies that allow the filing of claims that are not related to or prevented by good loss prevention programs, dust control within federal

or state compliance levels, and noise reductions within federal levels. For example, very costly claims for occupational pneumoconiosis are filed routinely as a matter of course in not only the coal and manufacturing industries, but also in the construction industry and retail services industries. The statutory scheme and the Division's practices allow awards charged against employers where there is no actual relationship between an injurious dust exposure and disease development and often awards are made for either a disease without impairment or for impairment without detectable, diagnosable disease due to the presumption that impairment is caused by disease. These anomalies are very costly and the Association urges that the Division both acknowledge and commit to factor these type of claims into a more flexible system thereby avoiding the improper conclusion that an employer experiencing a large number of these claims is one with poor performance and, as such, subject to imposition of penalties. Such a conclusion should be legally impermissible. Unfortunately, nothing in the current draft gives public recognition to and flexibility for dealing with these serious anomalies in our workers' compensation system.

In general, the WVSIA endorses the proposals for new insurance products set forth in the premium rating plans with specific reservations enumerated below. However, we do not endorse many provisions of the Series 9 regulations that are overly complex and extremely difficult to understand and interpret, thereby assuring compliance difficulty and in large measure because the regulations whenever possible should themselves provide an easy framework for employers to follow. They lack simplicity, clarity and brevity.

Finally, the WVSIA regrets that the Division would not appoint an ad hoc committee of Association and business representatives to work with it in dealing with this onerous regulatory project.

Many of the provisions of the proposed regulations contain language that is confusing, arbitrary, and which may be interpreted in a capricious manner. The Division states that the proposed rules create the framework for it to finance the workers' compensation system; to establish incentives to prevent injury; to charge those employers which create losses; and to reward those employers which do not. Such laudatory purposes generate no opposition because they are fundamentally reasonable and equitable. However, in designing its ratemaking overview, there are a number of deficiencies that need to be addressed in the rules, as currently drafted. The Association believes that some of the Series 9 regulations impose unacceptable restraints upon employers and create the opportunity for unjustifiable, arbitrary, discretionary and, indeed punitive interpretations which appear inconsistent with the Workers' Compensation Act and other regulations. Some of these provisions of Series 9 do not have an objective criteria for assessment and, thereby, compel employers to assess the political, social, economical or other merits of the rule which, once enacted by the Performance Council, are vested with the same authority as legislation. WVSIA had hoped that the Division would exercise due restraint in recognition of many of the concerns first raised in response to the initial draft of the Series 9 regulations titled "Underwriting." Every reasonable regulatory construction may be and will likely be resolved in favor of the Division, once these regulations are enacted. Courts may not be concerned with questions relating to

the Division's policies and the Division's general powers to promulgate regulations appear almost plenary. However, because economic rights are involved, the Association urges the Division to insure that its regulations are rational and bear a reasonable relationship to its proper governmental purposes. This is the only way all employers can be treated equally and equitably.

SECTION II - PRIORITY COMMENTS

The following section sets forth the Association's priority concerns.

1. §85-9-12.3 (Adverse Risk Plan)

   This section creates an adverse risk plan imposing additional premium taxes for employers determined to be substandard performers. The stated purpose of the adverse risk plan is to encourage substandrad performers to adhere to the Act and the rules of the Division and to improve their performance. Another purpose is to offset any adverse impact which poor performers with elevated risk bring to other employers sharing risk in the same classification. Section 12.2 specifically authorizes the Division's assignment of self-insurers to the adverse risk plan. The Association opposes this as an unnecessary regulatory tool since the very justification for the adverse risk plan would not allow placing a self-insurer in it.

Because self-insurers directly pay benefits to their employees and because their contingent liabilities are secured, a "poor performing" self-insurer will not impact upon a classification risk rating of other employers. To the extent that this adverse risk plan is intended to be an enforcement tool to encourage improved performance, it represents a harsh remedy when applied against a self-insurer. If the Division were to determine that a self-insurer has performed inadequately, the remedies already in place, imposition of monetary penalty or revocation of self-insuring privileges, are sufficient incentives to compel compliance. Therefore, assignment of a self-insurer to the adverse risk plan when these other remedies are available is viewed by WVSIA as nothing less than a punitive measure. This arguably is tantamount to imposition of civil penalty without due process. Quite clearly, the administrative hearing process provided in the Series 7 regulations will not stand due process testing for redressing challenges to imposition of civil penalties.

With regard to the twelve specific placement criteria addressed in Section 12.3, the Association believes that the Division has failed again to enumerate criteria that are tied directly to risks and, therefore, many of the criteria do not bear a rational relationship to the purposes of the adverse risk plan and, as such, it is respectfully submitted, may not pass

judicial scrutiny. For example, the failure by an employer to maintain the proper level of premium tax deposit is redundant since such a failure could lead to delinquency and/or default; a self-insurer's failure to post adequate surety would not justify assignment to an assigned risk plan if the self-insurer and Division could agree upon a program for resolving such surety shortage and that the Division rationally justifies the surety requirement level; failure by an employer to make improper payments to a medical provider or to a claimant would not be a rational basis for assignment to an assigned risk plan; only proper invoices and proper pay orders should be honored; an employer's failure to comply with applicable federal and state safety laws or regulations is not subject to evaluation by Division employees; the Division does not have the requisite experience in interpreting compliance with other statutory schemes. Most importantly, employers obtain no affirmative defense by showing compliance with federal and state safety laws or regulations to defend against or mitigate exposure to workers' compensation liability, because our statutory scheme is a no-fault system and does not have any relationship to employer compliance with other federal and state laws and regulations. Finally, by providing that the Division may consider "such other factors or criteria considered by the Division to assess risk or insure fairness and equity" not only provides unbounded

discretion within the Division, but sets forth the glaring deficiencies in the criteria that are not tied to specific workers' compensation risks. Therefore, while WVSIA recognizes an adverse risk plan is a nationally accepted insurance tool, the criteria for placement of employers into such a plan are simply unacceptable and need to be redrafted to reflect an objective risk-based criteria.

2. §85-9-6.14 (Assignment to Rating Plans)

This section gives the Division authority to assign an employer at any time to any workers' compensation insurance plan authorized under this rule. Because there is not language limiting applicability of this section, it becomes almost arbitrary in its potential application. While the Division may make a rational justification for assignment of employers to an adverse risk plan, there does not appear to be justification for allowing the Division to unilaterally assign an employer to any other particular rating plan. To the contrary, employers should be allowed to select participation in any rating plans they deem appropriate for their business interest and for which they are qualified. The unrestricted authority to assign employers to other alternative plans may even be interpreted as authorizing assignment of a self-insurer to an insurance plan for previously unannounced or unjustified reasons. Since the privilege of self-insurance is granted by the Compensation Programs

Performance Council, it and it alone should approve any recommendation by the Division to revoke it.

3. §85-9-13.6 (Security Levels)

Since 1990, no issue has dominated the interest of self-insurers as intensely as the ongoing issue of the appropriate level of securities needed to secure the Division from contingent self-insurer risks. As drafted, the above section provides no parameters for measuring self-insurers' obligations to their employees and dependents. West Virginia Code §23-2-9 provides that a measurement of the full accrued value of an employers' existing and expected liabilities will be predicated upon Generally Accepted Accounting Principles ("GAAP"). Notwithstanding this statutory provision, this section suggests that the Division will determine the required levels of security based upon actuarial calculations of self-insurer liabilities. Indeed, the experience of self-insurers since 1990 suggests that this is the methodology that the Division utilizes even though the Division has for two years indicated that it would implement a sliding scale and would give recognition to other factors, such as employers' excess liability insurance coverage, in reaching a determination of the proper levels of security required of self-insurers. The Association is dismayed that the Division has apparently disregarded the statutory directive and the resulting adverse

impact potentially on self-insurers highlights the Association's concern about the arbitrariness of this rule and its future application by the Division.

4. §85-9-13.6.e (Complying with Increased Security)

This section provides that an employer which is determined to have inadequate or insufficient security will have a period of not more than ninety days to complete corrective action. Utilizing criteria only known to it, the Division has already identified those employers which it believes to have security deficiencies. Unfortunately, there is much confusion regarding the Division's current posture as to whether it justifies demanding higher levels of security when, indeed, such demands have not been made on all self-insurers. To the contrary, in some instances, the Division has taken the official stance that a self-insurer is out of compliance by not posting increased security even though the self-insurer has not been directed to do so, while, in other cases, other self-insurers with security deficiencies have been notified that they are in compliance. It is clear that this is a complex financial and economic issue. The Association believes the ninety day period to complete a corrective action is wholly inadequate and does not allow a time-frame in which to resolve substantial shortfalls, particularly when the Division and employer disagree as to both the methodology or

assessment applicable in the self-insurer's security determination. The Association has for the last six years steadfastly maintained that the Division cannot justify a requirement of 100 percent collateralization for self-insured contingent liability in all instances. Therefore, we urgently recommend that this provision be rewritten and that the time-frame for completing corrective action be enlarged to no less than 180 days to complete a corrective action. While the employer may protest a Division order requiring an increase in surety pursuant to §85-9-20, Section 13.6.e requires posting of additional surety prior to completion of an administrative hearing process even though that process will be one in which the Division provides the complaint, appoints the hearing examiner, and judges the outcome. Surely it is not unreasonable for the Division to reassess these serious issues and to find a way to work constructively with this Association and other self-insurers in resolving this very difficult dilemma. Arbitrary interpretation of these regulations and an arbitrary ninety day compliance period is unfair when the Division itself does not believe that it can resolve the current deficit in less than forty years. It is respectfully submitted that many of the same economic forces which prevent the Division from remedying all of its problems within ninety days would prevent individual self-insurers from doing so within the same time-frame. Accordingly, the ninety-day

requirement contained in this section does not comport with the Division's hope of designing a "fair and equitable" system for determining risk and pricing and, most importantly, an enlargement of a time-frame in which these issues may be resolved do not impact negatively on any employee or his or her receipt of benefits or any other relief to which they are entitled in the Act.

5. §85-9-13.8 (Renewal Fee)

This section requires payment of a $500.00 renewal processing fee when self-insurers file their annual renewal applications. In 1995, the Division imposed its first ever requirement that self-insurers file an annual application. While this process is not inconsistent with that followed in other states, there do not appear to be any other states that charge large administrative fees and separate renewal processing fees. It is respectfully suggested that these fees are duplicative and they should not be charged. Therefore, the Association asked that the renewal application fee be struck.

6. §85-9-13.11 (Buy-Out of Self-Insured Liabilities)

This section purports to authorize the Division at its discretion to require any self-insurer to pay into the Fund an amount equal to the present value of all of its unpaid but unawarded claim liabilities as determined by the Division. The 1995 amendments to the Workers'

Compensation Act, and specifically those changes to Section 23-2-9, eliminated the Division's statutory authority to compel such a buy-out. Therefore, the Association respectfully suggests that this section out to be struck as it clearly exceeds statutory authority and, were it retained, it would represent a clear and arbitrary abuse of executive rulemaking if it contained in the rules when this section is enacted.

7. §85-9-13.8.d (Graduated Premium Tax)

This section purports to authorize the Division to assess a graduated premium tax against an underinsured self-insurer to insure the Division against additional risk. As with the adverse risk plan, this section does not provide any standards, guidelines, or criteria which will be utilized by the Division in establishing a graduated premium tax. The Association believes that it is completely inappropriate for the Division to be empowered to establish this additional authorized tax without first establishing fair and equitable criteria. The Division should say what it means and mean what it says with regard to the self-insurer programs. The Association respectfully suggests that this is another glaring example of one-sided heavy-handedness that does not bear a rational relationship to the purposes of the Series 9 regulations.

8. §85-9-7.4 (Experience Period)

As noted in our comments to the initial draft of Series 9, the Association continues to be concerned about the decision of the Division to utilize three fiscal years prior to the fiscal year during which an actual rate calculation is made as the experience period used to determine experience modification factors. The initial utilization of this approach will result in a large number of claim remaining in litigation that will not be defended by employers. Unlike typical national insurance products, the purchase of workers' compensation insurance coverage in West Virginia does not provide opportunity for the purchaser to have its claim defended by the insurer. Indeed, the insurer, as a government entity, has a fiduciary responsibility to be impartial in the handling of matters between the primary stakeholders, the employees of the state and their employers. In absence of management defense, it is only reasonable to assume that the increase of those claims will impact dramatically on the unfunded liability resulting in yet ever larger requirements of employer premiums to cover these additional losses.

SECTION III - OTHER COMMENT

1. §85-9-3.23

The Association suggests that this definition appears to be well beyond all statutory definitions and, therefore, exceeds the scope of executive branch rulemaking.

2. §85-9-4.6

This section is vague; the Association recommends that the Division amend this sentence by inserting the word "premium" after the words "base rate" in the second sentence. Insertion of this word will insure that this language is consistent with the Division's current policy utilized in assigning employer classifications.

3. §85-9-4.7.b and 4.7.c

Both sections should be clarified because the current language leads to inconsistent and unequitable results. Both the Division and employer should be able to go back a period of five years to correct misclassifications. The rule should allow either party to obtain the benefit of a misclassification error.

4. §85-9-4.7.c

The Association objects to this proposed section. If an employer and the Division have agreed upon a plan to increase alleged security shortages, the Division should not be able to use the refund amount to

purchase additional security or annuities. This is an improper taking of property and the Division should not withhold the refund.

5. §85-9-4.9

The Association object to the inclusion of an "inspector" as a designated person having authority to issue subpoenas. Since the Division already gets to appoint the hearing officer and, in fact, serves as prosecutor, judge and jury on matters involving hearings under this section, there does not appear to be justification for including a new category of Division employee as one empowered to issue subpoenas. The Association respectfully suggests that this is another example of a rule exceeding statutory authorization and that the Commission or Executive Director or designated hearing officer should be the only officials authorized to issue subpoenas.

6. §85-9-5.1 Duty to Register

The Association questions the wisdom of requiring employers who are not obligated to pay premium taxes to the Division to provide written documentation to the Division for exemption. Perhaps the Division can utilize the benefit of the information available to its sister Unemployment Compensation Division to insure that employers who are required to be covered are, in fact, covered. Surely the Division

ought to be able to achieve this without requiring employers who are not required to be covered under the Act to "register" with it.

7. §85-9-5.3 through 5.5.d

These sections are unclear and unnecessarily onerous. The Association recommends that this section be struck in its entirety due to their burdensome nature and compliance will be very difficult, if not impossible.

8. §85-9-6.1 (Independent Contractor Criteria)

As noted in our comments to the initial draft to Series 9 titled "Underwriting," the independent contractor factors appear to be well beyond the scope of executive rulemaking, as there is no definition in the Act that justifies the inclusion of all of these factors. Decisional law from the West Virginia Supreme Court of Appeals has defined the factors that determine definition of "independent contractors." It is respectfully suggested that the Division may not include factors that are not already enumerated by the courts in their various decisions.

9. §85-9-6.1.b

The Division's current policy requires employers seeking declaration as a "seasonal employer" to file its request at least 30 days prior to the quarter in which its premium tax report is due. While it is laudable that the Division finally promulgates a written policy regarding seasonal

employers, it would appear that 30 days prior to the due date would be more than adequate notice to the Division that an employer is seeking to petition it for seasonable employer status.

10. §85-9-6.15

The Association objects to this section requiring that all correspondence to the Division from an employer or its representative contain the employer's policy number as well as the federal ID number. This is an unnecessary requirement; employer representatives usually do not have this information and there is no justification for this section.

11. §85-9-9.7.d

The Association recommends that the Division allow an employer exercising a deductible payment to pay directly the approved deductible. There are adequate safeguards to insure that an employer paying a deductible amount pays the correct amount. There are multiple examples where self-insured employers have often began the payment of correct benefit amounts without being ordered to do so by the Division.

12. §85-9-9.c

The section indicates that, depending on the nature of the modification of business, the Division may require the employer to pay an additional fee assessed to offset the cost incurred to perform reviews. The

Association opposes additional fees being charged to employers. The purpose of the administrative fee paid by employers is to cover the cost of Division personnel and we believe those fees are adequate to cover the actual cost of the Division in performing its assessment of the propriety of an employer obtaining a particular insurance product. Therefore, we recommend this section be deleted.

13. §85-9-13.9.a

The Association objects to this section as it is unduly burdensome and onerous. Self-insurers should only be required to provide this information if the changes referred to in this subsection affect the self-insurer's liability. Normally, employers could not be required to file such a contract unless the workers' compensation liability is assigned. Such assignment would require the filing of a contract and approval of it by the Division. Therefore, we recommend that this section be rewritten.

14. §85-9-14.7.b

The Association objects to the language of this section which would require self-insurers and other guaranteed cost premium tax payors to pay to the Division premium on a monthly basis if the employer has an annual premium of more than $100,000.00. Financially sound companies should not be required to pay into the Division on a more

timely basis merely to serve the Division's unjustified decision to have that money available for investment before it is currently lawfully due and owing. While it is completely appropriate for the Division to protect itself from employers who do not have adequate resources to pay premium in a timely manner, it is completely inappropriate for it to use these same protection provisions for the purpose of increasing the Division's cash flow. In short, there is no justification for the Division adopting any rule that will require employers to pay more frequently if the employers have otherwise been on good standing and are otherwise financially sound. Perhaps the Division ought to remind itself when promulgating regulations such as this, that employers have other business obligations, including tax obligations to the federal, state and local government, which require the employers to be able to plan and anticipate when such payments will be due.

15. §85-9-14.7.c(E)

The Association objects to the language of this section requiring an employer with $100,000.00 or more in annual premium to make accelerated deposits.

16. §85-9-17.3.1 (Assumption of Experience Modification)

This section requires a successor employer to assume a predecessor's experience modification factor is greater than one, and if the successor

employer does not already have an experience modification factor in that same class. However, if the predecessor employer's experience modification factor is less than one, a successor employer is not permitted to assume it. The Association respectfully suggests that this approach is neither fair nor equitable.

17. §85-9-17.6

This section is confusing. The Association recommends that the Division clarify whether it is requiring a certificate of good standing or a certificate of coverage and that the Division enumerate the differences between the two certificates.

The Association recognizes that many of its comments do not directly impact on self-insurers. Nonetheless, it believes that it must raise issues of fundamental fairness, equity and due process. The Association obviously opposes any further erosion of the fiscal integrity of the West Virginia Workers' Compensation Division. However, it is respectfully suggested that these regulations, while well-intended, create multiple opportunities for employers to be out of "compliance" and that the regulations can result in the crippling of economic opportunities for existing businesses, whether they are premium tax subscribers or self-insurers. The Association seriously urges the Division to take the time to assess all of the comments and to provide further revision, clarification and improvement on the current draft of the Series 9 regulations.

Risk Management Rule
Response to Comments

Section	Source	Comment	Recommendations
Title	Emily Spieler	• The title is a misnomer.	Response: Risk management, as suggested by the commentor, has a narrower definition than that contemplated by the Division. The Division intends to provide a table of contents with this rule to describe the sections therein. In addition, through the efforts of the Division and the Performance Council, the rule has gathered an identity as the "Risk Management" rule as a result of mass mailings, public hearings and the distribution of approximately 1100 copies of the rule.
General Comments	Robert J. Smith, Chief ALJ	• A commentor suggests that this rule not be implemented prior to the training and hiring of qualified individuals. • A commentor suggests that increased litigation may result from the implementation of group retrospective rating plans and that the fiscal note should reflect increased demand on resources from this perspective.	• RESPONSE: The Division agrees. The rule is structured to be implemented over a time period after final filing of the rule and not all at once. • While it is true that small employers banding together are more likely to be represented by counsel, it is equally true that the encouragement of safety programs under this rule and other recent rule initiatives should decrease the number of work related injuries, result in better management of work related injuries, and result in less of a pool of claims to have the potential for litigation.
	WV Construction Council WV Health Services ACT	• Commentors suggested that the Division consider the regulation of third party administrators.	• The Division believes this proposal merits further discussion, the examination of the Workers' Compensation Act to determine whether the Division has the statutory authority to engage in this activity, and either the promulgation of rules or appropriate statutes regarding the same.
	Emily Spieler	• A commentor suggests that the fiscal note is insufficient to implement the program.	• The fiscal note represents the Division's estimate of the costs of securing the personnel necessary to carry out the Division's primary responsibility of implementing the subject insurance plans, ratemaking and auditing functions.
	Gatewood Products, Inc.	• A commentor expressed concern that the QLMP program not be lost in this process. • A commentor wonders when this	• The QLMP and Loss Prevention programs are an integral part of the Division's approach toward creating a safer workplace for employees and a ratemaking systems more reflective of an employer's costs to the system. Each program, tied to the calculation of experience modification factors and loss costs factors, is dependent on the new methodology for calculating rates and EMFs.

Section	Source	Comment	Recommendations
		program is likely to reduce the workers' compensation deficit. • A commentor suggest that more regulations be promulgated regarding management of claims.	• The current deficit reduction plan is in its second year of a forty year plan. • The comment is not directed at the subject rule.
3.2	Home Builders Association of West Virginia	• The definition of assets is very broad and suggests that the Division will have access to proprietary information, which, if leaked, could "destroy the business". • A special provision should be added to the rule to limit the kinds of information obtained by the division. • Proprietary information is privileged and should not be divulged by the Division to any other entity • Anyone found guilty of sharing this information shall be found guilty of a felony and imprisoned.	**No Change.** • This definition is similar to the one found in FASB CON-6 as stated in the Governmental GAAP Guide (p. 24.19). Section 21, as written, addresses this comment. • Other sections of this definition have also been directly taken from West Virginia Code section 23-2-14(e) which states assets means all property an employer has interest in including, but not 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" • The type of information the Division may release is stated in subsection 21.3 of this rule which is in accordance with the provisions of West Virginia Code, 23-1-4.
3.10b.	Jackson and Kelly (WV Coal Association) Jackson and Kelly (Business Industry Council)	• 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. • The section seems contrary to West Virginia Code §23-2-5(d) and §23-2-5(h)(1)	**No Change.** • The language in this section was taken directly from a previous rule titled 85 C.S.R. 11 which was approved in Summer 1996 by the Performance Council. • This comment is in reference to the notification of the Division of employers of default. However, this section is intended to address situations when the Division becomes, and has not been, aware that an employer has been in business. The default period is immediately prior to the actual date when the employer had employees.
3.10	• Bowles, Rice, McDavid, Graff & Love	• New employers applying for workers' compensation coverage may make inadvertent errors in filing requirements. • If these inadvertent errors occur, the Division should have the discretion to	**Change.** • It is understood that employers may not intend to operate without subscribing to the regular fund and paying required premiums. • The rule shall be changed to read "...including particularly the penalty prescribed by W. Va. Code §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

Section	Source	Comment	Recommendations
		permit the employer coverage without being stripped of common law defenses.	death of any employee, however occurring, without the benefit of the common law defenses set forth in that section."
3.11	• Bowles, Rice McDavid, Graff & Love • Acordia of West Virginia • ESC • CNG Transmission Corporation	• There is a concern that employers could be deemed delinquent for not paying pay-orders (regardless of the accuracy of the pay orders received from the Division) • Comments suggest the word "proper" be placed between honor and pay. • Other comments suggest this be amended and narrow criteria to cases in which the employer has shown a pattern of failure to honor payorders without proper cause. • Employers should not be penalized by attempting to avoid overpayments.	**Change.** • The word proper will be inserted in this section of the rule. • We agree that employers should only be responsible for paying *proper* pay orders and *proper* medical bills. • A definition of 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.
3.19	Jackson & Kelly (for West Virginia Coal Association)	• The 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.	**No Change.** • The intent of the Division is to consider that an employer is not in good standing if it is delinquent or in default.
3.20	Performance Council	• "Incurred losses" should be better defined.	Change in definition.
3.22	No Comment - Additional Definition Added	• The Risk Management Team felt, upon further review of this rule, that a definition of "exposure units" would add clarity to the definition of "standard premium tax."	**Change.** • The definition of exposure unit shall be added to the rule and this subsection shall state, "'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."**
3.23a.C.	• Bowles, Rice, McDavid, Graff & Love	• This provision is too broad and could be construed to include in my own law firm, for example, the employee who had	**Change.** • This subsection will be changed as follows "Having any other relationship which gives one person authority directly or indirectly to

Section	Source	Comment	Recommendations
		been designated as our head messenger or copy center supervisor, both of whom perform important functions in determining how we conduct our business.	determine the manner in which an employer conducts its overall business operations."
3.23	• Bowles, Rice, McDavid, Graff & Love • West Virginia Self Insurers Association • Jackson and Kelly (for West Virginia Coal Association) • Jackson & Kelly (Business & Industry Council)	• This provision is too broad and could be misconstrued. • The Association suggests that this definition appears to be well beyond all statutory definitions and, therefore, exceeds the scope of executive branch rulemaking. • The presumptions of ownership and control contained in this section, would be directly contrary to the provisions of West Virginia code 21A-2-6. • The use of these definitions will create situations where employers who are deemed to have ownership and control of a business in default, will be denied coverage for a subsequent business operations and will be in default and permit blocked. (contrary to code section 21A-2-6).	**Change.** • This definition shall be changed by removing the provision of 3.23.a.A. concerning ownership by the permittee of a surface mine operation. The definition is not contrary to 21-2-6 (18), as it is not used in the rule for purposes of blocking permits. • This section of the rule does not address situations of ownership and control of businesses in default. These situations are covered in subsection 5.5 of this rule. See the comments and responses for this section.
3.31	Jackson & Kelly (Business & Industry Council)	• 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.	**No Change.** • West Virginia Code 23-3-1 states that "a portion of all premiums that shall be paid into the workers' compensation fund....shall be set aside to create and maintain a surplus fund to cover the catastrophe hazard, the second injury hazard, and all *losses not otherwise specifically provided for in this chapter.....*" This statement is broad enough to allow for the use of such funds to reduce the deficit.
4.3	Bowles Rice	• It should be restated in this section that records should be kept for five years. This is consistent with section	**No Change.** • We feel that the current wording is sufficient. This particular section addresses the maintenance and availability of employer information and

Section	Source	Comment	Recommendations
		4.1.	records rather than the length of time that these records must be kept. Since the length of time that information and records must be preserved is addressed in 4.1, it seems redundant to mention it again in 4.3. Not only would "...for five (5) years" have to be added, but also that the employer has to retain these records for a longer period of time in matters involving disputes with the Division until the dispute is resolved. There are no inconsistencies presented simply by omitting the suggested revision.
4.5	Bowles Rice	• The Division should be required to conduct inspections of employers' records at reasonable locations since in could be quite cumbersome for employers to transport records that may be quite voluminous. The section should read: "...audit the information referred to in this section during the regular business hours of the employer or at another reasonable time at the employer's place or places of business or at other reasonable locations ..."	**Change.** • We agree that this language should be added and will change the rule to state: "or at another reasonable time and place within the state of West Virginia." • An employer should provide its records at a reasonable location within the State of West Virginia.
4.6	West Virginia Automobile & Truck Dealers Assoc., Gates McDonald, WVSIA, ESC, Acordia, Gatewood Products	• The Division should clarify the concept of assigning an employer the class which most accurately represents normal business activities of the employers operations by inserting "premium" between "rate" and "consistent with".	**Change.** • Premium is made up of base rate and wages. The highest base rated premium could be only a few employees with extremely large salaries compared to the rest of the work-force. Including the word "premium" could be interpreted to mean that classification would be based on the those employees with the highest wage times base rate. However, we agree that the current wording can be misleading. We suggest that is be changed to: "the highest base rate consistent with the general business operations of the risk being assessed."
4.6	Gatewood Products	• The Division should allow Gatewood to maintain separate rate classes which was a decision reached during an appeal.	**No Change.** • Any agreements made with the Division prior to the issuing of this rule will be honored unless otherwise contrary to the provisions of the rules. This type of situation is addressed in 4.6.d.

Section	Source	Comment	Recommendations
4.6.b.B	Bowles Rice	• Since it is possible that employees can be trained to perform another job, the wording "and can not be" should be eliminated.	**Change.** • The key to this statement is that personnel are not used interchangeably, not whether they are capable of being used to perform another job. We recommend that "and can not" be deleted and the wording be changed to "employee(s) are not customarily used interchangeably".
4.6.c	Bowles Rice	• It should be restated in this section that records should be kept for five years. This is consistent with section 4.1.	**No Change.** • This particular section addresses the maintenance and availability of employer information and records rather than the length of time that this records must be kept. Since the length of time that information and records must be preserved is addressed in 4.1, it seems redundant to mention it again in this section as not only would "...for five (5) years" have to be added, but also that the employer has to retain these records for a longer period of time in matters involving disputes with the Division until the dispute is resolved. There are no inconsistencies presented simply by omitting the suggested revision.
4.7.a.B	Bowles Rice	• Since employers are only required to maintain records for five years unless otherwise stipulated by the Division, retroactive payments of premium resulting from a field audit should not exceed five years. Further, the Division should consider whether the misinformation provided by the employer was due to excusable confusion or willful intent to mislead to Division when determining retroactive payments.	**No Change.** • It is not the intent of the Division to go back more than five years for an audit unless there is reason to believe that fraud is involved. Further, the burden of proving misclassification is on the Division which would typically involve evidence other than employer records. In the absence of any employer records, those available from state and federal agencies will be used. **Change.** • Language added to state, "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	WVSIA, Contractors Association of West Virginia, West Virginia Automobile & Truck Dealers Association, ESC,	• Employers as well as the Division should have the benefit of a repayment of an overpayment due to misclassification.	**Change.** • Changes recommended to correspond with comments. See 4.7.a, b and c.

Section	Source	Comment	Recommendations
	Business and Industry Council (Jackson & Kelly)		
4.7.c	WVSIA, Bowles Rice, Acordia, ESC	• Refunds due an employer should not be retained in order to purchase additional security for an undersecured employer especially if the employer has already come to an agreement and made arrangements with the Division to obtain additional security.	**Change.** • The section was changed to require the division to use the refund amount to purchase additional security in matters involving undersecured employers. The section was changed so that it would not apply to unsecured employers who have entered into and are maintaining an agreement with the Division to increase security.
4.9	WVSIA, ESC, Bowles Rice	• Inspectors should not have the right to obtain a subpoena for information and records.	**No Change.** • It is imperative that the Division have at its disposal the quickest, most effective means for obtaining necessary information and records from employers. Giving an inspector the authority to subpoena provides this capability. Further, subpoena power and those allowed to issue a subpoena is addressed in the provisions of WV Code, 23-1-8.
4.9	Bowles Rice	• Bowles Rice recommends that this section of the rule be amended to allow the employer to decide if a hearing or deposition should be conducted in order to obtain records when the employer is not cooperating with the Division in providing this information.	**No Change.** • This section addresses a situation in which the employer is not being cooperative in providing the Division with requested information. If employers feel they are not being treated fairly or within the provisions of the code, they should follow the appeals process mentioned in section 20 of this rule.
4.10	Bowles Rice	• The rule should require the Division to give an employer proper notice and reasonable time to gather information and records for an audit, request for information, or hearing.	**Change.** • We agree with the addition of this language and will change the rule to include it.
Section 4 General	Hinchcliff Lumber Company	• What will the qualifications be for field auditors? It is fine to have someone trained in accounting auditing financial	**No Change.** • The qualifications for field auditors are addressed in the job descriptions provided by the personnel division. These descriptions are based on the

Section	Source	Comment	Recommendations
		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.	needs of the job. It is not our intention to have field auditors performing assessments of job classifications and safety inspections. Field auditors will only be asked to facilitate the completion of a preliminary safety check-list by the employer. This check-list was designed by qualified safety and loss consultants. There will be no analysis regarding safety and loss control required by the auditor. The checklist will be reviewed and analyzed by qualified Division personnel. More extensive investigations will be conducted by specialized safety and loss control personnel.
Section 4 General	Hinchcliff Lumber Company	• Try to help small businesses with this rule. Do not make the reporting and recordkeeping requirements too cumbersome. Try to align reporting schedules with other agencies. • It may not be a good idea to let small businesses pay premium only once a year. 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.	**No Change.** • Allowing small companies to pay premium only once a year will significantly reduce the amount of time spent reviewing records and reporting to the Division. These companies may be required to pay the premium at the beginning of the coverage period. By paying up front, there is less risk of not being able to pay the required premium. The $500 maximum should not be too much of burden for most small businesses. These issues are addressed in section 10 and 14 of this rule.
Section 4 General	Affiliated Construction Trades Foundation	• There should be more enforcement mechanisms in place to allow the fund to stop cheaters.	**No Change.** • The intent of this rule is to create a more fair and equitable workers' compensation system. Most of the elements of this rule, such as the field audit process, are specifically designed to stop those who have been able to undermine the system.
Section 4 Addition	ESC	• ESC would like to see wording from the Series 1 rule which was not included in this rule added. Series 1 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	**Change.** • Language added per comment.

Section	Source	Comment	Recommendations
		of such premium for a period not to exceed the preceding five (5) fiscal years."	
5.1.	WVSIA	• WVSIA questions the wisdom of requiring all employers to register with the Division.	• Provision reworded in response to comment.
5.3 through 5.5.d.	WVSIA	• Provisions are unclear and unnecessarily onerous.	• Provision reworded to simplify provisions in response to comment.
5.5.b.	Business & Industry Council	• No statutory authority to deny coverage.	• Recommendation: Delete the provisions of 5.5.b regarding denial of coverage. The comment merits further study.
6.1.	ESC Contractors Assn. of WV WVSIA Weirton Steel Business & Industry Council Bowles Rice	• Many comments indicated that safety training required of an independent contractor prior to engaging in work on the business entities' premises should not be used as a factor in determining whether the person is an independent contractor. The division agrees. • Additional comments regarding this section indicate that the Compensation Programs Performance Council does not have the statutory authority to refine the employer/employee relationship beyond that which has previously been determined by the State Supreme Court.	• The provisions regarding independent contractors were simplified and focused on the aspects of control or direction of activities. • The Court has focused on right to control or supervise as the distinguishable feature of an employer/employee relationship. The Division believes that further refinement of the criteria to be considered when a determination is needed regarding independent contractor status is well within the purview of the Performance Council.
6.1.b.	ESC WVSIA	• Comments received requested that this provision be changed to allow the seasonal employer to apply for and demonstrate its seasonal status 30 days in advance of the coverage period.	• Considering the seasonal employer must demonstrate that it is entitled to seasonal status over a two year period, the Division may need 60 days to review the request and examine the documentation. • Leave language as is.
6.2.	ESC	• A comment received suggested that this section reference the provisions of	• Add to 6.2, "In accordance with the provisions of West Virginia Code §23-2-1(g),..."

Section	Source	Comment	Recommendations
		W.Va. Code §23-2-1(g). The Division agrees.	
6.2.d.A.	Bowles Rice	• A comment suggested that the number of officers able to be elected out of coverage be expanded to eight (8).	• This suggestion is inconsistent with the statutory language utilized at 6.2.d.A and would result in an improper expansion of the statute, the loss of premiums and the opening of a loophole that would encourage the naming of numerous officers when, in fact, the individuals perform employee functions. • The provisions of 6.2.d.B was added, "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."
6.3.c.D.	ESC	• A commentor suggested that the application period to include an officer who has elected out of coverage be substantially narrowed from 60 days to 15 days.	• Many employers have officers who elect in and out of coverage on a frequent basis. It has been noted that some officers file workers' compensation claims shortly after electing into coverage. The Division would prefer that employers make a conscious effort to request coverage far enough in advance that an industrial injury is not a motivator for requesting coverage. The time period for election into coverage is lengthy to discourage such practices.
6.14.	ESC WV Auto & Truck Dealers Assn. CNG Emily Spieler WVISA Weirton Steel Business & Industry Council Home Builders Assn. Gatewood Products, Inc. Bowles Rice	• Many comments were received regarding the assignment of employers to a particular plan. Employers Service Corporation and the WV Automobile & Truck Dealers Assn. noted the necessity of assigning particular employers, notably self-insured employers whose status is revoked, to a particular plan. Comments from Bowles Rice suggest the ability to assign only to the guaranteed cost plan. Other comments point out the potential for abuse in an assignment process and request that such a provision be deleted.	• This provision was eliminated in response to comments.
6.15.	Bowles Rice	• A commentor indicated that the	• Many employers have similar names or go by different names than

Section	Source	Comment	Recommendations
(now 6.14)	WVSIA	requirement of a policy number and FEIN number on all correspondence should not include correspondence in litigated claims. Another commentor suggested that such a requirement is unnecessary and should be deleted.	listed. E.g. Joe Smith Painting might be listed (as its application stated) Smith & Sons Painting, Joe's Painting or some other variation not readily apparent. Thus, there is a definite need for such a requirement in many types of correspondence addressed to the Division. However, it is equally true that in matters involving claims, the employer is required to provide his policy number in the WC123 (application for benefits). Thereafter, the case is referred to by an assigned claim number. • RECOMMENDATION: Change 6.14 to suggested language. • "Correspondence. All correspondence to the division from an employer or its representative related to an employers' workers' compensation account, premiums, or coverage issues shall contain an employer's policy number as well as the employer's federal identification number."
7 (general)	• Hinchcliff Lumber	• Every employer should have a tailored rate never based on industry, only use industry rates for new subscriber	**No Change.** • The proposed method incorporates an experience rating plan that (see Section 7.4) is more tailored to an employers experience yet must continue to fundamentally reflect the concept of insurance (i.e., spread the risk by incorporating industry experience).
7-general	• Affiliated Construction Trades Foundation	• Wages should not be the primary exposure base in construction	• **No Change** but a valid point. Section 7.1 states the performance council's ability to "provide for a different exposure base consistent with the definition of remuneration or such other exposure base as it may determine." ACT's comments should be incorporated by the performance council when considering any changes to the current method of assessing exposure. However, it is our recommendation that no changes should be until the initial implementation has been completed and the Division is comfortable that it is adequately supporting all other changes indicated by this rule.
7.1.a	• Acordia	• Concern over the inclusion of non-taxable benefits in the exposure base	**No Change.** • The wording in the rule is the same as the current regulation's definition for "gross wages". Section 7.2.n of the rule gives the performance council the opportunity to adopt a definition of remuneration consistent with that of the IRS.
7.4.c	• Employers Services Corporation • Contractors	• Experience period (number of fiscal years) used to determine an employer's experience modification factor should be longer than three	**Change.** • The experience period should remain flexible to accommodate different needs for different industries. In section 7.4.c, the wording should be changed to "an experience period deemed appropriate by the

Section	Source	Comment	Recommendations
	Association of West Virginia • West Virginia Automobile & Truck Dealers Association • West Virginia Self-Insurers Association • Weirton Steel Corporation • Bowles Rice McDavid Graff & Love	years • Changes in claim values for years prior to the experience period should somehow be incorporated into the ratemaking process to ensure proper litigation of older claims	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." As well, section 7.2.g gives the performance council the latitude to determine the number of years to use in the experience modification factor calculation. **No Change.** • The Division will no longer make adjustments to an employer's prior years' premium as a result of changes in status of litigated claims. Ratemaking accounts for these changes through factors that incorporate the way older claims develop over time.
7.4.d	• Acordia	• Glad to see the move to incurred losses, however, a reduction in reserves should be granted for employers using vocation rehab plan	**No Change.** • The MIRA system incorporates a variable for vocational rehab and adjusts the reserves accordingly.
7.4.d.A	• West Virginia Business and Industry Council	• The Division should incorporate into the merit rating system changes to claim reserves & payments that occur for experience periods outside of the range used for the merit rating	• See recommendations to section 7.4.c
7.6	• Bowles Rice McDavid Graff & Love	• Rule should add a section 7.6.d that states the Division shall also include with the annual statement the employer's classification and a brief description of the underlying risks that roll up to that classification	**No Change.** • Although the comment is valid, the increased system requirements do not appear to justify a change at this point in time. In the long run, the Division may want to consider adding the class and description to the annual statement, but only after it has mastered all of the other changes that are required to implement this rule. In the meantime, employers having issues with their classification will be able to find assistance and resolution with the underwriters and field auditors.
7.6.a	• Employers Services Corporation • West Virginia	• Grammatical in nature, refers to the wording used to describe how the Division will communicate experience period losses to employers in the form	**Change.** • ESC's wording better states the performance council's objective for this section. It is recommended that the change should state, "The paid and incurred costs of the employer's claims that occurred during the

Section	Source	Comment	Recommendations
	Automobile & Truck Dealers Association	of an annual statement	experience periods underlying their rate calculation;"
8.2	• Acordia • West Virginia Business and Industry Council	• Division should not be able to assign employers into a specific rate plan	**Change.** • Provision adjusted to reflect deletion of assignment language.
9.4.e.B	• Bowles Rice McDavid Graff & Love	• Errors in processing should not require re-application fee	**Change.** • Section 9.4.e.B will be restated to say 'the employer may be required to ~~must~~ begin the application process again..."
9.6	• National Federation of Independent Business	• Security requirements for the deductible plan should be simple and reasonable	**No Change/Valid Point.** The performance council should consider this comment when adopting the parameters outlining the security requirements. However, this does not require changes to the rule.
9.6b	• Bowles Rice McDavid Graff & Love	• Insert "subject to 9.6.f provisions" for consistency in determining security requirements	**Change.** • Section 9.6.b will be changed to incorporate the Bowles Rice comments and insert "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..."
9.7d	• Employers Services Corporation • Acordia • Bowles Rice McDavid Graff & Love • West Virginia Business and Industry Council • West Virginia Self-Insurers Association	• Employers choosing various levels of deductibles should have the ability to pay their assumed risk directly to the employees as opposed to the Division paying and seeking reimbursement. • Experience rated modification factors for participants in the deductible plans should be calculated using experience in excess of their deductible level so that the Division is not "double dipping"	**Change.** • Section 9.7.d was added in response to comments received under this provision. • Experience modification factors are always calculated from the ground up (as if the employer was in the guaranteed cost perspective). For deductibles, the employer receives a credit that is applied to their guaranteed cost rate based on the estimated amount of losses expected to occur underneath the deductible level. The employer assumes that risk in the hopes that they will experience less claims than average for their industry. If this happens, the employer pays less than the premium they would have paid if in the guaranteed cost program. This is not "double dipping", it's known as the spread of risk, also known as insurance.

Section	Source	Comment	Recommendations
	• Gatewood Products • West Virginia Automobile and Truck Dealers		
9.8.b	• Bowles Rice McDavid Graff & Love	• Employers not in compliance should have opportunity to respond before being suspended or terminated	**Change.** • Section 9.8.b will be amended to add, "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 day period will result in the suspension or termination. Suspension or termination shall take effect thirty days after the date of notice where the matter has not been resolved."
9.9.c	• Employers Services Corporation • West Virginia Self-Insurers Association • Gatewood Products • West Virginia Automobile and Truck Dealers	• Application fees should be reasonable	• **No Change/Valid Point.** The rule does not require change, however the performance council should consider this comment when adopting a fee structure.
10-general	• Gatewood Products	• Very confusing, education sessions are critical	**No Change.** • Valid point, as soon as the education sessions are planned, the Division will communicate schedule to employers.
10.2.c	• National Federation of Independent Business • Frank Gates • West Virginia Retailers	• Language should be clarified and broadened for group eligibility	**Change.** • Section 10.2.c will be clarified to say "The employers in the organization must be in the same classification. 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

Section	Source	Comment	Recommendations
	Association • Contractors Association of West Virginia • West Virginia Automobile & Truck Dealers Association • Gates McDonald		the determination provisions of 7.2 of this rule.
10.2.d	• National Federation of Independent Business • Employers Services Corporation • Frank Gates • West Virginia Retailers Association • Contractors Association of West Virginia • West Virginia Automobile & Truck Dealers Association • Gates McDonald	• $500,000 in aggregate premiums is too high of a criteria to be eligible for the group retro plan	**Change.** • Section 10.2.d will be changed to state, "aggregate workers' compensation premiums ... to exceed $250,000 ~~$500,000~~"
10.2.e	• West Virginia Retailers Association	• Groups should not have to prove that the program will "substantially improve accident prevention"	**Change.** • Section 10.2.e should be changed to state, "the organization shall be required to provide a written plan for a safety and loss control program ~~must substantially improve accident prevention~~ and claims handling for the employers in the group." Not all groups will have employers with

Section	Source	Comment	Recommendations
			problematic loss experience.
10.2.f	• West Virginia Retailers Association	• Should allow for new business entities to enter groups.	• **No Change/Good Point.** Excluding new employers is necessary on the outset so that the product is easier to price, administer and implement. As the division gains the experience in working with groups, the performance council should consider broadening the rule to allow new employers to participate.
10.2.f.B	• Frank Gates	• Reinstatement agreements for payment of premium or assessment obligations should not deter an employer's participation in the group plans given that a resolution has been worked out with the Division	**Change.** • Section 10.2.f.B should be replaced with, "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 restatement plan;"
10.2.g.E	• Frank Gates	• Groups should provide evidence of their safety initiatives at renewal time	**Change.** • Section 10.2.g.E will be revised to include, "...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	• Frank Gates • West Virginia Automobile & Truck Dealers Association	• Groups applying for more than one group should not be automatically rejected from all groups	**Change.** • Change in the provisions of 10.3 to simplify terms of application for group status.
10.4.c	• Frank Gates • West Virginia Automobile & Truck Dealers Association • Robert J. Smith	• A representative of the group should be established that provides a list of approved attorneys to be used by the participating employers to ensure that the group's best interest is always the focus during litigation. • Representatives of groups that go before the Office of Judges must be attorneys Group application period should be shortened to one quarter prior to start date	**No Change.** • Lists of approved attorneys is not a concern to the division. This should be up to the sponsoring organization to decide if they want to mandate as part of the membership requirements of the group. **Change.** • Section 10.4.c will be revised to incorporate, "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..."
10.4.d	• Frank Gates	• If an employer leaves a group, all	**No Change.**

Section	Source	Comment	Recommendations
	• West Virginia Automobile & Truck Dealers Association	open claims impacting the group's experience should be litigated by an attorney with the group's best interest in mind	• Again, this should be up to the sponsoring organization to decide if they want to mandate as part of the membership requirements of the group.
10.5.b	• Bluefield Regional Medical Center	• Application period should be shortened to one quarter prior to beginning of coverage period	**Change.** • Section 10.5.b should be changed to state, "Completed applications... shall be filed <u>one</u> ~~two~~ full quarters prior to the beginning of the coverage period."
10.5.c	• Frank Gates • West Virginia Automobile & Truck Dealers Association • Bluefield Regional Medical Center	• Renewal applications should not be due until 45 days prior to start • Changes to group membership should be allowed on a quarterly basis	**No Change.** • Given that the premium letters must be sent 30 days prior to the beginning of the coverage period, it is necessary that renewal applications be received 90 days prior to coverage. **No Change.** • Quarterly changes would add significant administrative activities that impact ratemaking, claims, and billing. These requirements would be extremely difficult for the division to support. Annual assessments are also easier to administer for the sponsoring organization. As the division becomes more experienced in supporting group retros, the performance council may consider expanding the options of this plan.
10.5.e	• Frank Gates • West Virginia Automobile & Truck Dealers Association	• Participating employers found to be ineligible by the division should be given 14 days to resolve or rescind application for the group retro plan	**Change.** • Section 10.5.e should add the statement, "<u>Employers found to be ineligible will be given 14 days to resolve all issues surrounding their ineligibility. If eligibility issues are unresolved</u> ..."
10.6.d.F	• Employers Services Corporation • West Virginia Automobile & Truck Dealers Association	• "Non-Subject" premium is undefined	**Change.** • Section 10.6.d.F will be revised to add, "<u>Non-subject premium refers to exposures that are not subject to the experience or retrospective rating</u>." For example, catastrophic losses that are considered anomalies and result in significant losses (i.e., an explosion in a coal mine).
10.7.a	• National Federation of Independent	• Timing of the final reconciliation should be a clearly defined time frame	**No Change.** • For the final adjustment, experience from other group plans suggest that agreement from both the Division and employer is the most effective

Section	Source	Comment	Recommendations
	Business • West Virginia Automobile & Truck Dealers Association • Employers Services Corporation • Frank Gates		and efficient way of administering this type of plan. For the annual adjustments, the Division needs the flexibility at the onset of implementing the changes. As the data requirements and procedures are mastered, time frames will be more feasible and the performance council should consider a more rigid schedule for administering these adjustments.
10.7.b	• Employers Services Corporation • West Virginia Automobile & Truck Dealers Association • Frank Gates	• Time frames should be set for the refund or additional premium due resulting from the retro adjustment - recommendation of 60 days • In determining the retro adjustment, claims in litigation that appear to be near settlement should only recognize half of the cost	• See recommendations for Section 10.7.a • **No Change.** Recognizing half of the cost defeats the purpose of reserving. Development factors are utilized that incorporate past histories of subrogation. At the same time, WV law allows only for the subrogation of medical, not indemnity.
11.1.a	• Employers Services Corporation • West Virginia Retailers Association • Acordia • West Virginia Business and Industry Council • Bowles Rice McDavid Graff & Love	• The Division should not assign an employer to an individual retro (or deductible) plan	• See change in 11.1.a as a result of the deletion of the assignment provisions.
11.4	• Employers Services Corporation	• Criteria of at least $25,000 in standard premium is too low for the individual retro plan - recommend $50,000	**Change.** • Section 11.4 will be revised to state, "Coverage under a retrospective rating plan is available to an employer if the estimated annual standard premium is at least $50,000 ~~$25,000~~."

Section	Source	Comment	Recommendations
11.6.B.D & E	• Employers Services Corporation	• The term "basic factor" should be defined	**Change.** • Section 11.6.b.D will be revised to add, "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."
11.10.a	• Employers Services Corporation • Bowles Rice	• Time frames should be set for the refund or additional premium due resulting from the retro adjustment - recommendation of 60 days.	• See response under section 10.7.b
12 (general)	Emily A. Spieler	• Any new employer with sufficient corporate or other identity with a predecessor which was in the assigned risk pool should be required to enter as a member of the assigned risk pool.	**No Change.** There are several sections in the rule that address this issue: • Section 17.2, Obligations of a successor employer states that "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.e.) The successor employer shall assume all liability, charges and contingent liabilities of the predecessor employer and shall be subject to modifications to premium rates as contained in subsection 17.3". • Section 17.4, states "In the event of sale or other transfer of assets not covered by the above provisions, the division will make such a ruling in the case as is proper, following the principles and policies set forth in this rule." • Section 12.3, criteria (11), states that an employer shall be considered for the assigned risk plan "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 (general)	Emily Spieler	• Language should be added to the rule which will allow the publication of the names of the employers who are in the assigned risk plan or, at a minimum, an annual statement be published by the Division which sets out the number of employers in each industrial class in the assigned risk plan and the reasons for assignment to this plan.	**No Change.** • The language utilized in the rule regarding the type of information which is allowed to be released comes directly from the provisions of West Virginia code section 23-1-4. Expansion of the language to include additional information regarding an employer would contravene the specific provisions of the statue. • There are also sections in the rule which address this issue: • Section 7.2.m. affords the compensation programs performance council the authority to "determine the annual statement

Section	Source	Comment	Recommendations
			components and the time frames for distributing the annual statement." • Section 21 of this rule also specifies the type of information the division may release, pursuant to a proper request.
12 (general)	Gatewood Products	• The adverse risk plan has the potential to severely increase premiums, and drive employers to locate their business outside of the state of West Virginia. There could be a loss of jobs, as well. • The QLMP program should be implemented prior to or instead of the adverse risk program. • It appears that the QLMP program was handled separately from the Risk Management rule, and without much, if any, public notice.	**No Change.** • The QLMP and Loss Prevention programs are an integral part of the Division's approach toward creating a safer workplace for employees and a ratemaking system more reflective of an employer's costs to the system. • The QLMP rule was developed by a committee of representatives of both business and labor. Several members of the Risk Management team provided information and input into the development of this rule, and these team members also had involvement in the development of the 85 C.S. R. 9 rule. The rule was developed and public comment was encouraged at public hearings during that time. • The implementation of the adverse risk plan will also allow the Division the opportunity to identify employers (generating the greatest costs) who could benefit from the QLMP program, so that once implemented, these employers will be easily targeted for the program. • The implementation of the Adverse Risk plan will afford the Division (with Performance Council Approval) the opportunity to surcharge employers who are currently generating the greatest costs to the Division. • Employers not placed in the adverse risk plan may also benefit by its implementation. For example, if employers in the plan are paying additional premiums, this means employers in other plans will pay less in premiums to the Division.
12.3 (general)	• West Virginia Self-Insurers Association • Acordia of West Virginia	• The criteria for placement of employers into such a plan are simply unacceptable and need to be redrafted to reflect an objective risk-based criteria. • The placement criteria should be better defined. Many matters are open to interpretation. All criteria should be	**Change.** • The majority of the criteria in section 12.3, with the exception of criteria (12), are clearly stated and based on risk related factors. Criteria (12) is recommended to be deleted. • Some of the language in these criteria is open to interpretation as not all situations lend themselves to hard and fast decisions. Much thought and consideration must occur when reviewing individual employer performance.

Section	Source	Comment	Recommendations
		objective.	• Without the allowance for subjective thought, participation in this plan may be unnecessarily high. This comment does not specify the criteria which are to be reworded.
12.2	• Acordia of West Virginia • West Virginia Self-Insurers Association	• The inclusion of self-insured employers in this section is inappropriate, seen as a punitive measure, tantamount to imposing civil penalty without due process. • Self-insureds have direct consequence of sub-par performance, providing the punitive consequences directly without the necessity of a surcharge. • Remedies already in place, imposition of monetary penalty or revocation of self-insuring privileges, are sufficient to compel compliance. • A "poor performing" self-insurer will not impact upon a classification risk rating of other employers.	**Change.** • A change was made to the provisions of 12.2 which would exclude self insured employers from the adverse risk plan. • As the rule does not apply to self insured employers, criteria (7) is being deleted from section 12.3.
12.3	• ESC • Contractors Association of West Virginia • West Virginia Self Insurers Association • Weirton Steel	• Criteria (5) should be deleted. Conceptually it is covered in criteria (4) and criteria (6).	**Change.** Criteria (5) will be deleted
12.3	• ESC • Weirton Steel	• Criteria (7) "when applicable, whether the employer has failed to post the amount of surety required by the division", should be reworded because the Division is currently allowing some self-insured employers the opportunity to reduce surety shortages over time. • Employers which fall into this category	**Change.** Criteria (7) is being deleted from section 12.3.

Section	Source	Comment	Recommendations
		should not be penalized.	
12.3	• CNG Transmission Corporation • ESC	• Criteria (8), "whether the employer has failed to make a payment or payments to a medical provider or the claimant, as required.....", should be reworded so as not to indicate that self-insurers be responsible for pay orders and medical bills which are incorrect and contain mistakes • Employer failure to make payments to a medical provider or a claimant should only be valid criteria if such failure is predicted upon a proper pay order medical bill. Section 2.1(b) of Series 5 addresses this very issue. Criteria 8 is inconsistent with this Series 5 provision.	**Change.** • We agree that employers should only be responsible for paying *proper* pay orders and *proper* medical bills. • We will insert the word, *proper*, in criteria (8) which will state, "Whether the employer has failed to make proper payment or payments to a medical provider or claimant, as required by the applicable provisions of the West Virginia Code or rule promulgated thereto;..." See comments and recommendations made in section 3.11.
12.3	• Bowles, Rice, McDavid, Graff & Love	• Criteria (9) should be deleted. It is too vague and open to interpretation. • The workers' compensation system should not be punitive based upon minor infractions or subject to litigation over phrases like "any applicable regulation" or "any other rule or program."	**Change.** • We feel that compliance with these rules is necessary for the administration of an effective system for managing workers' compensation risks. The wording for criteria (9) will be amended to narrow the scope of compliance specifically to this rule. The criteria shall state "Whether the employer is not in compliance with the provisions of this rule".
12.3	• ESC • CNG Transmission Corporation • Contractors Association of West Virginia • Emily A. Spieler • Bowles, Rice, McDavid,	• Criteria (10), "whether the employer has been cited for failure to comply with any applicable federal or state safety laws or regulations", should be deleted. • The Division does not have the experience to interpret such citations, and some citations may not have a direct relationship to losses.	**Change.** • Criteria (10) will be revised to read "Whether the employer has been proven to be out of compliance with any federal or state safety laws and regulations directly affecting employee safety or health;" • There may be violations of laws and regulations that do not directly affect employee safety or health, and these violations should not be considered when making adverse risk plan placement decisions. • The Performance Council will be evaluating all criteria in section 12.3 in their entirety and in accordance with West Virginia Code 21A-3-7. The Division is currently attempting to obtain the resources necessary to effectively implement this rule.

Section	Source	Comment	Recommendations
	Graff & Love • West Virginia Self Insurers Association • Weirton Steel		
12.3	• ESC • CNG Transmission Corporation • West Virginia Self-Insurers Association • Weirton Steel	• Criteria (12), "Such other factors or criteria considered necessary by the division.....", is too broad and should be deleted.	**Change.** We agree with this statement. Criteria (12) will be deleted.
12.3	• Emily Spieler	• Add to the list of placement criteria, whether the employer has failed to cooperate with an investigation conducted by the National Institute for Occupational Safety and Health.	**No Change.** • Criteria (10), "Whether the employer has been proven to be out of compliance with any federal or state safety laws and regulations directly affecting employees safety or health;" would seem to include "failed to cooperate with and investigation conducted with the National Institute for Occupational Safety and Health" if such a violation directly affects employee safety or health. This criteria has been left open to include such an organization, and the language will remain unchanged.
12.6	Emily Spieler	• Make it clear that the employer which is in the assigned risk plan will not benefit from the reduced base rate in the calculation of its own rate • That the base rate for employers in the assigned risk plan will be all employers in the industrial class, including the high risk employers, and that this rate will then be raised by the multiplier. • Only those employers not in the assigned risk plan should benefit, through the retrospective rating process, from the removal of the	**No Change.** • Employers in the adverse risk plan will be surcharged according to the reasons for placement into the plan and the premium requirements determined necessary by the Division. • Employers not in the adverse risk plan will benefit from this plan, as the premiums required to reach the required premium threshold will be minimized as a result of the increased premiums being required of adverse risk plan participants. • The benefits (e.g. premium reductions) received by non-adverse risk plan participants will be reflected in lower overall base rates. However, not all employers will benefit equally due to differences in experience modification factors and rating plan assignments.

Section	Source	Comment	Recommendations
		losses of the assigned risk plan employers	
12.6	Emily Spieler	• Information should be formally sought from employees and their representatives in making adverse risk determinations	**No Change.** • Information is formally required from employers as a part of the application process, which is documented in various sections of the rule (8.3, 9.5, 10.5, and 11.5,). • Information will also be requested as part of the field auditing procedures as stated in section 4 of this rule. Information will only be released in accordance with section 21 of this rule.
12.6	Emily Spieler	• Approval of the Performance Council should not be required for assignment. The decision should be made administratively. Hearings are available under 85-9-20 for full review of any decisions.	**No Change.** • Recommendations for placement into the adverse risk plan will be made administratively by a Division representative or underwriter. Due to the potential long-term policy impact of placement decisions, such placements will need to be reviewed and approved by the Compensation Programs Performance Council, in accordance with their responsibilities outlined in West Virginia Code 21A-7. • See section changes at 12.8 related to notification of employers by the Division.
12.6	Weirton Steel	• This section does not explain how and when an employer will be removed from the Advance Risk Plan	**Change.** This section should be reworded to include a statement of the Division's plan for remediation pertaining to removal from the adverse risk plan. See section 12.7.
13 general	• Weirton Steel	• Actuarial methodology has more of an adverse impact on the employer than nonactuarial methodology that is also allowed under GAAP • Wants to make security issue subject to sliding scale	**No Change.** • The division takes exception to the description and characterization of events pertaining to Weirton Steel's security negotiations as related in their public comments. However, any detailed response on the part of the Division would violate the confidentiality guaranteed to all employers by the Division. • Using actuarial methods to predict the full accrued value of employers existing and accrued liabilities is consistent with GAAP. Mere disagreement by employers of the actuarial methods used in security computations does not constitute an inconsistency with GAAP or a violation of the state code.

Section	Source	Comment	Recommendations
			(See FAS 60, ¶17; FAS 60, ¶18; and FAS 60, ¶19; attached) • **Recommended change:** In accordance with the provisions of subsection 7.2. the division ~~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. • The division's sliding scale has been circulated for comment. The Division wishes to maintain flexibility with regard to implementation.
13 general	• Acordia	• Assigned risk for security shortage • Division actuarial computations not consistent with GAAP • Consideration of other opinions for security issue	• See change to 12.3 • See GAAP discussion above • **Change.** Security issues will be determined by the Compensation Programs Performance Council.
13.2.e	• Acordia	• The allowance of applicant 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.	**No change.** • General comment expressing agreement with this portion of the rule.
13.3.a	• Acordia	• Remove language on account reconciliation since division is moving to an incurred cost basis	**No change.** • This language can not be removed from the rule because account reconciliation is mandated in §23-2-9 of the West Virginia Code.
13.3.b	• Business & Industry Council	• New rating system will cause the employer who elects to self-insure risk to pay twice for the future value of awards and medical benefits	• **Change language to read.** "At the time of the 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.
13.3.c	• Acordia • Bowles Rice	• Allow a reduction in required security when employer has a gain to the fund as a result of incurred losses less than predicted	**No change.** • This section allows a reduction in buyout amount without allowing a direct credit of the overpayment. The effect of including the positive loss experience in the buyout calculation actuarially reduces the amount of

Section	Source	Comment	Recommendations
		• Provides no mechanism for the division to consider excess premiums paid in determining required security	security required (so long as it is not below the one million dollar minimum). Note: There was an overall change to require approval of the Compensation Programs Performance Council concerning matters of security.
13.4.a.C.(g)	• Business & Industry Council • ESC	• Wording should change to reflect refunds from the Division for overpayments	**No change.** • 23-4-1.c.3.h states ... "when the employer has elected to carry its own risk, the division shall refund to such employer the amount of the overpayment ..." If an employer does not make a payment, it should not be required to seek a refund from a health care provider. We will review this section for purpose of clarification.
13.4.a.D	• Bowles Rice	• Wants to change the word *will* to *may* when discussing the review of an employer's record who has been issued a revocation notice	• **Make the requested change:** "... the division ~~will~~ may review the employer's entire record...."
13.6.	• Compensation Programs Performance Council	• Matters involving security, applications for self-insurance and removal of status need to be made by Compensation Programs Performance Council	• **Note:** Change made throughout provisions of Section 13.
13.6	• WVSIA	• Does not believe that the division is using GAAP to measure the accrued value of liabilities • Dismayed that division has not yet implemented sliding scale • Believes rule is arbitrary	**No change.** • See GAAP response in general comments
13.6.a	• Acordia	• $1 million dollar security minimum is arbitrary and contributes to the negativity surrounding workers' compensation in the business climate	**No change.** • The one million dollar minimum serves as a barrier to employers who are not large enough to be self-insured. It also serves somewhat as protection for the division from employers who refuse to cooperate on security issues. The minimum security account also includes coverage

Section	Source	Comment	Recommendations
			for liabilities arising from the election to self-insure catastrophes.
13.6.b **13.6.e.A**	• Bowles Rice	• Wants posting of additional bond be subject to the sliding scale (13.6.g)	**No change.** • The sliding scale can not be tied to the security review process until it has been tested and refined.
13.6.d	• Acordia	• Wants the financial ratio's assessment stated in terms that employer can perform pre-application assessment	**No change.** • The division will insert a list of the financial ratios into the self-insurance application packet. However, common accounting financial ratios and tools of finance are only part of the Division's analysis of a potential applicant. Ratios carry different weights depending upon industry type. The Division can not possibly list all the permutations and combinations of ratios and industry type. An employer with questions about possible preliminary self-insurance eligibility should contact a self-insurance underwriter at the Division.
13.6.d	• Acordia	• Wants specifics of sliding scale	**No change.** • A draft of the sliding scale has been distributed for comment.
13.6.d	• Weirton Steel	• Wants excess insurance to be included in security computation	**No change.** • The Division factors many variables into security negotiations including excess insurance and annuities.
13.6.e	• WVSIA	• Criteria for security deficiency a secret • Division's current policy on security is inconsistent • Want time frame for completing corrective action extended to 180 days	**Change.** • The Division recognizes the anxiety of self-insured employers who are greatly undersecured and believes that a provision for a work-out plan should be added to this section to protect said employers and the fund. Note: Overall change in approval of security by Compensation Programs Performance Council. • **Recommended language change:** Note: Overall language change requiring approval of Compensation Programs Performance Council in matters of security. Note also, change requiring division to notify the employer prior to the division requesting an increase in security. Note change, reasonable period of time allowed for work-out agreement.
13.6.e	• Weirton Steel	• Security may be required to be posted even though a protest has been lodged	• **Recommended language change:** 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

Section	Source	Comment	Recommendations
			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.
13.6.e.C	• Bowles Rice	• Reduce the security minimum for employers whose business in the state ceased years ago	**No change.** • Requiring less security of employers who have left the state provides them with a competitive advantage over their in-state competitors. The security minimum is also an incentive for these employers to "buy-out" their claims, saving the Division the additional administration expense associated with self-insured employers.
13.6.g	• ESC • Bowles Rice	• Change language from *may* to *shall* for development of the sliding scale • Add *on or before the effective date of these rules*	• **Make the change:** In accordance with the provisions of subsection 7.2. the division ~~may~~ shall develop a sliding scale based upon the employer's financial circumstances, ... • **No change:** The division must retain flexibility for purpose of implementation.
13.7.b.A	• Bowles Rice	• Wants to change language from the second injury to "an appropriate" second injury to account for unusual situations.	**No change.** • The language as written does not preclude the division from making allowances for anomalies in computing second injury life award experience rating of a class. The Division attempts to always reflect appropriate experience in its calculations.
13.8	• ESC • WV Auto & Truck Dealers • WVSIA • Weirton Steel	• Employers pay too much admin to also have a renewal fee	• **Change.** Eliminate renewal processing fee. • As stated in the comments, many other states do not have administrative fees for self-insured employers. However, these other states do not adjudicate claims. Claims are processed in the same manner for all subscribers. The only difference is that a pay order is issued to self-insured employers while a check is issued on behalf of regular subscribers. Additional administrative costs directly attributable to self-insured employers are: • Maintenance of a security data base • Security negotiations • Payorder compliance tracking • Separate liability analysis for financial audit

Section	Source	Comment	Recommendations
			• Additional programming issues for all division software • Application process • Additional personnel for self-insurance account maintenance/ monitoring • Reapplication process • Financial strength/risk assessment • Post Audits • Double reporting requirements for the division on all statistical reports • Rate computation • Security review and employer notification • Credit reporting service access • Parental guarantee maintenance • As part of ratemaking, the division will review administrative fees to determine their adequacy in the context of proper cost allocation.
13.8	• Bowles Rice	• Insert the word relevant with respect to accounting records	**Change.** • "operations and documents" **to** "operations and documents deemed relevant by the division.,"
13.8.c	• Bowles Rice	Limit the Division to guaranteed cost option for terminated self-insured employers	**Change.** • Assignment language eliminated from this section.
13.8.d	• Bowles Rice • WVSIA • Weirton Steel • ESC	• Significant reservations about the graduated premium tax - should be removed	**No change.** • If an employer is in the middle of a work-out agreement, that employer is admittedly undersecured by an amount determined during negotiations with the division. Until all of the negotiated amount of security is in place, the division and all employers are at risk. The graduated premium tax is to be used to secure that risk. Employers in a work-out plan will see their required amount of graduated premium tax diminish as each phase of their plan is completed. Note: Change to reflect security matters determined by Compensation Programs Performance Council.
13.9.a	• Bowles Rice • WVSIA	• Copy of contract should not be required unless liability is effected and then only relevant parts	**No change.** • The division has had trouble in the past with employers trying to say that a sale was an asset sale, etc., to elude workers' compensation liability.

Section	Source	Comment	Recommendations
			Information as to the type of sale, etc., can be garnered by the division's legal department only through a review of the executed contract. This section protects the division and the employer. Many times employers enter into agreements with other companies without fully understanding the workers' compensation ramifications and end up with a workers' compensation liability that can not be charged to the other company because of contractual constraints.
13.9.b	• Bowles Rice	• Change the word "must" to "may" for self-insured applications for new business or merger	**No change.** • The Division uses the application to assess risk in the event of mergers and acquisitions.
13.10.b 13.10.c. A	• Bowles Rice	• Buy-out should be final unless agreement otherwise	**Suggested Change.** This is confusing as written. The intent of the sentence in question is to protect the division from costs arising from buy-out amount challenges. The sentence should read: If the division incurs costs beyond those normally required for a buy-out calculation, the employer must pay a fee equal to the greater of $5,000 or the costs actually incurred.
13.10.c. B	• Bowles Rice	• Strike language imposing graduated premium tax on self-insurers who have been terminated	**No change.** • If an employer is undersecured, *the company is a risk to the division as well as all employers in the state regardless of self-insurance status.* That risk has to be secured and if the employer can not do it, the division must.
13.10.d. A&B	• Bowles Rice	• Does not want to require copy of fully executed contract	**No change.** • These sections help to protect the division from the shell games some employers played in the past. The division must have access to the executed contract to access risk in the situations delineated in 13.10.d, 13.10.d.A, and 13.10.d.B.
• **13.11.a**	• ESC • WVSIA • Bowles Rice • Weirton Steel	• Strike the word "require" from the section	• **Make the change.** 13.11.a. 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
13.13.c. B	• ESC	• Recommend further review of the section	**Change.** • Provision eliminated per comment.

Section	Source	Comment	Recommendations
14 General	• Business & Industry Council	• WV code does not allow the Division to require payments other than quarterly • Failure to maintain an adequate premium deposit should not cause an employer's account to become delinquent	**No change:** 1.The provisions referenced do not expressly limit the authority of the Performance Council to require other time frames for payment 2.The Performance Council has the statutory authority to "establish regulations designed to ensure the effective, administration and financial viability of...the workers' compensation system of West Virginia (§21A-3-7(b). The statutory purpose of the Council is to "ensure the effective, efficient and financially stable operation of the ...workers' compensation system .... §21A-3-1 3.Section 14, as written, is designed to ensure the effective, efficient and financially stable operation of the workers' compensation by identifying financial risk in the employer community and requiring payments in a time frame other than quarterly. 4."The rule shall be consistent with the duty of the commissioner and the compensation programs performance council to fix and maintain the lowest possible rates of premium taxes consistent with the maintenance of a solvent worker's compensation fund and the reduction of any deficit that may exist in keeping with their fiduciary obligations to the fund. §23-2-4 5.The provisions of Section 14 comply with the above statutory mandate δ Identifying financial risk to ensure payment of premium taxes is consistent with the maintenance of a solvent workers' compensation fund and the reduction of the workers' compensation deficit δ 23-2-5b states "Failure of an employer to timely pay premium taxes.... shall cause the employer's account to become delinquent."
	• Home Builders Association of WV	• Credit review will damage business credibility • Division does not have the authority to perform investigations	**No change.** • The information listed in 14.4 a 1-11 is little more than information provided in a credit report and audited financials. Employers undergo credit analysis in all walks of the private sector- the division needs to be able to access the same tools to manage its receivables as are at the disposal of private industry. All information obtained is subject to confidentiality provisions.

Section	Source	Comment	Recommendations
	• Gatewood Products	• Rating should only be based upon performance with the Division	**No change.** • Then, does it not follow that, banks should only look at performance with the bank when assessing creditworthiness of a loan applicant? Many businesses make timely payments prior to filing bankruptcy.
		• This plan has the potential of costing the taxpayers more	**No change.** • Successfully managing receivables will save the taxpayer premium dollars through a reduction in defaults and timely investment of premiums. Private industry has recognized the importance of receivables management as evidenced by their emphasis on maintaining an acceptable receivables turnover ratio. No insurance company can operate efficiently without carefully managing receivables.
14.1.f	• Mercer Health Center	• Exceptions for adverse weather conditions?	• **Suggested Change: The following provision should be added -** The division shall have the discretion to make exceptions for late deposits due to extreme adverse weather conditions such as floods, blizzards, fire, etc. Except as specified by the Division, the employer must request this exception in writing.
14.1.f	• Bowles Rice	• Do not give 1996 holidays; use more general language	• **Suggested Change:** 14.1.f. "Non-banking days" means local banking holidays, Saturdays, Sundays and legal holidays.
14.4.b	• Bowles Rice	• Language change from *will* to *may* in case information is lost in the mail, etc.	**No change.** • Lost mail and or errors do not constitute failure to provide information.
14.5.c	• Bowles Rice	• Language change from *will* to *may* for a downgrde in cases of delinquency or default	**No change.** • Employers who are delinquent or in default are a higher risk to the Division. Employers are protected from administrative errors causing default by §23-2-5 b which states "No employer will be declared delinquent or be assessed any penalty therefor if the division determines that such delinquency has been caused by delays in administration of the fund."
14.7.a.B.	• Bowles Rice	• Language change from *will* to *may* for a 25% underpayment of estimated premium taxes	**Change.** • Change made per comment.
14.7.b &14.7.c	• Bowles Rice	• Limit non-quarter deposit requirements to bad credit risks	**No change.** • These deposit rules, with few exceptions, mirror the payroll tax deposit rules of the federal government, which have stood the test of time for

Section	Source	Comment	Recommendations
			decades.
14.11	• Bowles Rice	• Add language providing for the opportunity to respond; and for a hearing	**No change.** • Hearing provisions can be found in section 20 of this rule
14.7.a..B	• ESC • Contractors Association of WV	• Penalizing premium shortfalls for annual employers may keep employers from expanding their businesses	**Change.** • Employers who expand their businesses should contact the division just as they would contact their other insurance companies. Many processes will change for such companies, (payroll tax deposits, record keeping, additional federal regulations, etc.) the least of which is the frequency of workers' compensation premium deposits. None of these processes "penalize" employers for putting more people to work. See earlier change from will to may.
14.7.a.B	• Home Builders Association of WV	• No annual payments without a settlement monthly or quarterly	**No change.** • Having employers settle up each quarter defeats the purpose of annual payments. Annual payments will save many employers workers' compensation processing fees and accounting fees. Paperwork will also be greatly reduced for the employer and the division.
14.7.b	• ESC • WVSIA	• Strike language imposing accelerated premiums on A credit rated employers	• The intent of this section is to allow the division to better manage its receivables and to make workers' compensation premium deposits more consistent with an already proven system used by the federal government for payroll tax deposits. The comment "employers have other business obligations to the federal , state, and local government which require the employers to be able to plan and anticipate when such payments will be due" supports the division's argument. This section will make workers compensation deposits consistent with the company's federal payroll tax deposits, thereby making payment of payroll taxes after a pay period easier - on an administrative and budgetary basis.
14.7.c	• Acordia	• No statutory authority to require payments other than quarterly	**No change.** • See section 14 general comments
15.2.g	Bowles Rice	• The statement "Failure to accurately report quarterly estimated wages for any such individual shall result in employer default,..." should be changed to "...may result in employer	**No Change.** • In order to avoid any argument over when default status, interest and other penalties are applied, the statement should not be changed to include "may" instead of "shall". The use of "may" would allow the Division to be arbitrary in the application of default status.

Section	Source	Comment	Recommendations
		default,..."	
15.3.d	Bowles Rice	• The Division should only allocate payments to the employer's longest outstanding amounts owed to the Division for a five year period.	**No Change.** • If an employer owes the Division money for periods older than five years and there are no disputes regarding whether the employer owes this money, the Division should be able to apply payments received to the outstanding amount. Just because a debt is older than five years does not mean that it should be waived.
15.4.b	Business and Industry Council (Jackson & Kelly) ESC	• The Division should not be able to retain the deposits of terminating employers in order to pay outstanding claims costs. • If the section is not changed, then such a policy should only apply to refunds requested after the effective date of the rule.	**No Change.** • The actual wording of 23-2-5 is as follows: "Upon withdrawal from the fund or termination of election of any employer, the employer shall be refunded the balance due the employer of its deposit after deducting all amounts owed by the employer to the workers' compensation fund and other agencies of this state..." • While we agree that if subscriber rates had always reflected expected future claims costs, then deposits should be refunded. However, previous to the new reserving system, some employers had the benefit of amounting excessive claims costs without paying the corresponding premium to offset such costs by terminating operations and ceasing to pay workers' compensation premiums, including employers who frequently shut down and restarted other businesses to avoid workers' compensation premiums. By retaining the deposit, this will help offset these costs. • **Change.** Regarding the second point, the Division agrees that this provision should apply to refunds requested after the effective date of the rule.
15.4.b	Bowles Rice	• Deposits should be returned within 90 days of filing the application for refund.	• It is the intent of the Division to make deposit refunds in a timely manner. However, given the resource constraints we are unable to set time constraints for refunds at this time. • **Change**. This provision was changed to include known claims reserved as opposed to the total of claims paid.
17.1.c.	Bowles Rice	• A commentor recommended that 17.1.c. be changed to note that a lien against assets is a lien against only assets located in West Virginia.	• The provision of 17.1.c is a reiteration of the statutory provisions of W.Va. Code §23-2-14(c)(3). The statutory provisions do not limit collections to assets located only in West Virginia. The Division does not believe that such a limitation here would be prudent and might encourage employers to shift assets out of state or limit the Division's

Section	Source	Comment	Recommendations
			ability to seek recompense for unpaid premiums. • RECOMMENDATION: Leave language as is.
17.3.a.	ESC Contractors Assn. of WV Bowles Rice WVSIA Weirton Steel Business & Industry Council	• Many comments were received stating that this section is unjust. The objections revolve around the requirement that a successor purchasing an employer's business having a modification factor greater than one accedes to that modification factor, whereas the purchase of a business with a modification factor of less than one results in the assignment of the base rate.	**Change.** • The provisions of 17.3 were changed to reflect the comments received.
17.5.	Bowles Rice	• A commentor requested that the language of this section include the following: "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."	**Change.** • A change was made to the provisions of 17.5 to reflect the comment received.
17.6.	ESC WVSIA	• Commentors indicate that this section is confusing and question whether a certificate of good standing to transfer to business or business assets is different from a quarterly certificate of good standing.	• The basis for a "certificate of good standing to transfer a business or business assets" is contained in the provisions of W.Va. Code §23-2-14(g). The document is different than a certificate of good standing (certificate of coverage). The language regarding the "certificate of good standing to transfer a business or business assets" was included in this rule to inform employers and Division members that a difference exits between the purposes of the documents. • **Change.** A change was made to the provisions of 17.6 to reflect this comment.
18.1.a.	Bowles Rice	• A commentor recommended that interest not be collected on late reporting or payment penalties. The commentor indicates that the Division may be challenged if the provisions	**Change.** • A change was made to the provisions of 18.1.a to reflect the comment.

Section	Source	Comment	Recommendations
		are not implemented.	
20	Bowles Rice	• A comment recommends deleting the last sentence which indicates that the time periods for filing a petition cannot be extended or waived.	• The provisions of W. Va. Code §23-2-17 indicate the time frames as expressed in the rule for filing a petition for hearing are jurisdictional. In other words, the Division has no right to hear an untimely filed petition. As a result, the period for filing a petition cannot be extended or waived because the division's ability to hear the case hinges on a timely filing of the petition. • RECOMMENDATION: No change.
21.3.b.	Emily Spieler	• A commentor suggests that language be added to this section which would allow the Division to release the type of workers' compensation insurance plan subscribed to by an employer or information indicating for what plan the employer has applied.	• The language utilized in the rule regarding the type of information which is allowed to be released comes directly from the provisions of W. Va. Code §23-1-4. Expansion of the language to include additional information regarding an employer would contravene the specific provisions of the statute.
21.4.	Bowles Rice	• A commentor suggests that the language of this provision be expanded to allow the Division to publicly release that information for which it has obtained an appropriate release or waiver.	• RECOMMENDATION: Change language to comport with comment. • 21.4. Without an appropriate release or waiver, the division may release or communicate publicly only that information which it may release under the provision of subsection 21.3 and W.Va. Code §23-1-4.

ORIGINAL

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 Charleston Civic Center, Room 206, 200 Civic Center Drive, Charleston, West Virginia, on the 27th day of September, 1996, commencing at 10:05 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

Gene Bailey

ALSO PRESENT: ANDREW N. RICHARDSON, Commissioner
Bureau of Employment Programs

RANDALL B. SUTER, Counsel
Legal Division

COMMISSIONER RICHARDSON: Thank you for coming out today for the seventh of eight public hearings throughout the state of West Virginia regarding the proposed changes in the ratemaking and underwriting system employed by West Virginia's Workers' Compensation Programs.

This is tremendous crowd. Obviously larger than we anticipated, and we really appreciate your attendance and hope that this morning's session proves to be informative and educational for you.

Do we have additional packets for those who don't have packets? Anybody that does not have the handout -- you should have three items. You should have a handout that looks like this (indicating), that says "West Virginia Worker's Compensation Division, Public Hearing Presentation;" you should have an item like this (indicating), that is the ratemaking proposed rule on ratemaking. It's actually entitled "Risk Management."

To put it in street terms, this is the book, this is the reader's digest version. Then we have an evaluation form, and we would very much encourage each and every person in attendance today to take time to complete the evaluation form and provide us with the feedback.

My name is Andy Richardson. I'm the

Commissioner of the West Virginia Bureau of Employment Programs, and we are here today to talk about the most fundamental change in the ratemaking and underwriting activity of the Workers' Compensation system in West Virginia in its entire history.

Up to this point West Virginia's employers have had two options available to them for financing their Workers' Compensation Programs. The vast majority of employers in the state are what we call subscribers to the Workers' Compensation Fund.

We might think of them as policyholders of a guaranteed cost insurance program where a premium is paid by the employer and the Workers' Compensation Program pays first dollar for any cost associated with work-related injuries and illnesses.

The second is self-insurance. And for those employers of sufficient size, employment level, payroll level, financial capability, safety and accident prevention programs in place, they may be granted the opportunity to self-insure their risks.

Now there are a number of problems with this current system and one of the fundamental changes made by the Legislature was Senate Bill 250, in 1995, which

deals with ratemaking and underwriting.

The provisions regarding rates completely rewritten to require the Compensation Programs Performance Council and the Workers' Compensation Division to develop a new system that would offer policy options, if you will.

Now today we're here to talk about that and to get your input on the proposals. The process today will be two-fold. You will first hear a presentation from our Risk Management Team regarding this entire subject matter, what we hope to accomplish.

We will have a question and answer period. Having done six of these up to this point, we will anticipate some questions and respond to them in the question and answer period and then see if it stimulates some other questions on your part.

We will then move to the actual public hearing side of this activity this morning. In the public hearing you will be given the opportunity to comment formally on the record to the Compensation Programs Performance Council about these proposals.

Now the Compensation Programs Performance Council was created by the West Virginia Legislature in 1993. It is a labor management body that has governing

oversight relative to Workers' Compensation policies and directions.

This is made up of four representatives of workers, four representatives of employers and myself. I'm the man in the middle, so to speak, as Commissioner of Employment Programs.

Now these guys always do this to me because as you look at them, most of the business folks are sitting to your far left and most of the labor folks are sitting to your far right. I'm here to tell you where they sit is not necessarily where they stand.

So I'm going to introduce these good people. At your far left is Gene Bailey who represents coal employers; next to Gene is Thad Epps who represents manufacturing employers; next to Thad is Everett Sullivan who represents construction workers. Following on across the table, Chris Jarrett. He represents employers generally, being a nominee to the Council from the West Virginia Chamber of Commerce. Paul Thompson represents manufacturing employees, and is a former steel worker; and Fred Trucker represents coal miners.

Now the Compensation Programs Performance Council is divided into two committees, principle

committees, a Claims and Administration Committee and a Finance Committee.

The Finance Committee has worked with the staff on the development of these regulations and authorized them to go forward for comment. Public comment is open until October 8, 1996, 5 o'clock p.m.

You'll note right here (indicating), the last day for written comment is October 8, 1996, 5 p.m. The address, Randall B. Suter, Counsel, Legal Services Division, Post Office Box 3922, Charleston, 25339-3922. If you would like to call and talk with Randy about any of these matters, the telephone number is listed.

What you will hear over the next few minutes, I'm going to provide a very brief summary, operating under the theory that if you hear things about three times you'll retain it.

You're going to hear about field audits and a changed approach to ensuring the accuracy of payroll, the appropriateness of risk classification and an initiative that will be undertaken to do a better verification job in this category across the state of West Virginia. It is fundamental. It is the foundation upon which this entire underwriting project must be based.

You'll hear about safety and accident prevention, a second key part of the underwriting and ratemaking process. I think it's safe to say, I think it's fair to say that West Virginia's Workers' Compensation system has historically done a fairly poor job of emphasizing safety and accident prevention. The incentives have not been there adequately in the current ratemaking design.

We hope these proposals in conjunction with other regulations that are currently under consideration by the Performance Council will mark the dawn of a new day in the way workers and employers throughout West Virginia view work-place safety.

Folks, we have about 70,000 claims filed every year in this state. We're a state with about 720,000 people in the work force. Now where I come from that's just too many and we've got to reduce the accident and we've got to have a system that does a better job of promoting accident prevention, safety and loss management.

Now the third area you're going to hear about is the actual policy options. Again, currently two policy options, regular subscriber or guaranteed cost program, self-insurance.

You'll hear today about a plan to segregate particularly bad risk employers into an assigned risk pool within the Workers' Compensation Program so that their bad performance doesn't continue to push the rates up of the good performers.

Hear what I'm saying, that means that the bad employers through this plan, their rates will probably be going up; good employers' rates, even if we didn't do anything else, probably be going down or may be going down. All right.

Retrospective rating is a second policy option. There's really two types of policy options here, one for individual employers and the other for groups of employers. Now without getting into the details of it, basically that's a settle up at the end of the year type of program. Okay.

We, in conjunction with the employer, would project what the cost would be for the policy year and if the cost to the employer were actually greater, then the employer would owe us additional money at the end of the policy year, and virtually if the cost to the employer was less there would be a rebate.

And the last option would be deductibles.

And I think everybody here knows how deductible works. If Everett Sullivan and I were driving the exact same automobile, and we don't. He drives a real nice automobile. I drive a Chevy Corsica. If we drove the exact same kind of automobile, had exact same experience, driving records and so forth but I had no deductible and he had a $250 deductible, who's paying the lower premium? Everett. It's pretty simple. And that same fundamental concept can apply to the Workers' Compensation Program.

Now the fourth general component of this has to do with collection and accounts receivables management. You know, a few years ago when I came into this business, what we found was remarkable. We had no chief financial officer, we had no collections system in place, we had no program to manage accounts receivables.

We've put those things in place now. We're doing far better than we were a few short years ago. However, we know that we can prevent a lot of folks from getting behind on their bills if we have a series of analyses on their credit risk -- just like any of the other potential financing system would have, like a bank would have -- if we analyze folks and classify them relative to their credit risk, if we offer many employers across the

state the opportunity to just pay once a year, to pay up front because they have a relatively low premium level, if we offer monthly instead of quarterly payments to help on the cash flow for both the employer and the Workers' Compensation Programs. These are some of the things that you'll be hearing about today.

We're talking about, again, fundamental changes in the way West Virginia's Workers' Compensation system is financed and how our unfunded liability is financed and what kind of incentives we provide for employers and workers to work together to keep accidents from happening.

And I want to offer a word of caution. This is not going to happen overnight. This is going to take a considerable higher level of skills and resources than we currently have available.

We will have to build the infrastructure to accommodate this within the Workers' Compensation Division. And it is a significant undertaking, but we can do it.

The game plan right now is for the Council to get all these different comments in and to make decisions on this collectively, hopefully by the beginning of November.

Okay, does that mean that November 1st, the world's going to change? No. What that means is that it will set up a mechanism for an orderly transition from the current system that we have in place to a new environment with multiple policy options. And we envision that being about an 18-month process. That's when you'll really begin to feel major changes.

Now I'd like to introduce the folks that are going to be making presentations here over the next 30 minutes or so. Ed Staats, our Chief Financial Officer with the Workers' Compensation Division; Chris DeAngelis, he's hiding from me over here in the corner, has been on the Risk Management Team; Amy Graves, I guess it's Friday. I should quit picking on Amy. Amy is a Purdue graduate. We had some fun with her last week on the public hearings with Amy, more fun this week with the outcome of the game. Do I have anybody on staff from Maryland? Again, a part of the Risk Management Team. Cheryl Ranson, part of the Risk Management Team, and Randy Suter, over in Amen corner. He's the fellow who is listed to receive your public comments. So with that, I'm going to step out and see if I can make this room any cooler and welcome Ed to the mike.

MR. STAATS: Thank you, Commissioner. We

appreciate the interest that this Risk Management Rule seems to have generated.

For those of us who have been in business and recognize and solve problems can't quite understand why folks like you would show up in a room like this to hear about Workers' Compensation in the state of West Virginia. There must have been some problems with it at some point in time.

We want to welcome you. Series 9 is a financing plan. It represents another milestone along the way, along the road that we have selected to solve the problems of the West Virginia Workers' Compensation system. We want to improve this system because this system has an economic impact. It has a significant economic impact.

In general, the economy of West Virginia is predicted to continue climbing in the future. Real growth state product is forecasted to rise at about 2 percent a year. Total non-farm employment is expected to grow. Unemployment is expected to decline. Real personal income is anticipated to grow at a rate of about 2 percent a year. And there's going to be a decline in transfer income due to efforts to solve the federal deficit.

All of this will impact West Virginia.

What this rule is intended to do, one of its objectives is to make the Workers' Compensation system an asset of economic development, not a detriment. It impacts all of us. It impacts the employees in this states and it impacts the employers.

The direction that we have established in this rule seems to have generated a substantial amount of agreement. We sent 40,000 of these little brochures out, and here's some of the comments we've gotten back about these brochures. From a small company in Weirton, the comptroller called, the people in his office cheered when they passed around that brochure.

They were complimentary about the proposed changes. They've already seen positive changes in claims management. They're very excited about the retro plans because their company instituted risk management efforts and it has not reflected in their experience modification factors.

They suggested that we not require a deposit for companies with a good Fund history and a good credit rating.

From the Bavarian Inn in Shepherdstown, the manager there wanted to have a retro, wanted to know how

they could sign up. They were excited that someone's looking out for people who don't have claims.

Small cabinet manufacturers, their premiums have gone up and they work very hard to control their losses. They want to see multiple classes. They were concerned that someone would keep the rule from going through and they felt that this one was for the little guy.

The strategy that's reflected by this rule is the back-to-basics, fundamental recognition that the financial ills of Workers' Compensation can be corrected by employers and their employees if the system provides methods for those groups to directly influence Workers' Compensation rates.

This financing plan fixes the responsibility for rates with employers and provides rewards if prevention of work-place injuries or illnesses occurs and is reflected in reduction of the number of injuries. But such a strategy to be successful requires full and complete disclosure to you of all policies, methods, procedures and cost drivers impacting your rates.

Other than the third-party administrators that are represented in the room how many people can tell me how Workers' Compensation calculates your rates? Three.

Well, we've kind of used a black-box approach for a long time, and that won't work. It doesn't allow you the knowledge to help you control what is happening to your Workers' Compensation costs.

There's no more hocus-pocus in ratemaking under this system. It is our intention to provide you with complete disclosure as we go forward.

My Risk Management Team today only intends to hit the high spots of the rule, the concepts. Let me give you a little bit of background about these people. Cheryl Ranson is a certified public accountant. She has a degree in mathematics, physics and science from WVU and a degree in accounting from the University of Charleston. She has six years of private sector accounting and management experience, along with eight years' experience as an instructor in mathematics and physics.

Amy Graves is a graduate of Purdue University with an M.S. in management and a graduate of the University of Michigan with a B.A. in economics. She has five years' experience in the life, health and property and casualty industry with CNA and MetLife, as well as three years' experience as an account analyst for Travelers Insurance Company in pricing and marketing Workers'

Compensation coverages.

Randy Suter, from our Legal Services Division is a 1978 graduate of West Virginia University College of Law. He has private experience and 16 years' experience with state agencies.

Finally, Chris DeAngelis, has a B.A. in finance and actuarial science from the University of Illinois. He has seven years' experience in property and casualty insurance, including pricing and reserving of Workers' Compensation coverage. He's worked with such companies as Allstate, Kemper and St. Paul. Chris is going to talk about ratemaking.

MR. DEANGELIS: Thank you, Ed. I'm really glad the Illini don't play the Mountaineers this year. It probably would have been a long tour but I guess I lucked out, and we probably would have lost too.

Anyway, as mentioned earlier there's many facets to the risk management rule. When talking about ratemaking we're really referring to the calculations, the formulas, the methods that are used to calculate not only each classification's base rates but also each employer's individual rate and eventually their premium.

Today I'd like to talk about four major

points that went into developing this new methodology that has really been afforded to us by the latitude through the new proposed rules.

And these four major points that I'd like to cover, the methodology is going to allow the costs that are developed by industry will be paid for by folks in that industry.

The second point is that individual employer's claims experience will be more responsive to their actual rates. The third point is that we want to have a model that more clearly communicates to you, the employer, what are the cost drivers that are really creating your Workers' Comp costs so that you know better what it actually is that is underlying those costs and how you can change that.

And finally, we wanted a methodology that allows flexibility in adapting the changes within the West Virginia Workers' Comp environment, while at the same time having the ability to support new products.

For many of you, I'm sure, if you've ever inquired as to how your rates have been calculated you probably feel like the guy here in this picture (indicating) where you're just kind of left hanging or

you're out on a limb, and we're really here to try and change that.

This illustration which is not in your handout really reflects the first objective, and that is, the industries that create the cost are going to pay the cost. If I'm a widget maker and all the claims experience for those widget makers in class acts are going to really be correlated to the premiums paid by that entire industry.

How are we going to do that? Well, basically my first point up here, and this is kind of an underlying theme throughout all the slides, is that something that started a couple years ago has really given us the foundation to implement these new systems and methodologies, and they are one, the MIRA system, which is a world class reserving data base tool that captures over 190 different variables and allows us to perform some in-depth analyses that will make the rates more reflective of what's really happening in the Workers' Comp environment.

The second system, the WCIS system, is a data base tool that allows us to store the information, to capture it and to sort it and extract it in a form that we can actually complete the analyses. So because of these two systems that have been -- the implementation started

many, many years ago, we have the ability to implement the new rate making system.

What does that mean to us? It means that we can have formulas that more clearly reflect what is happening in each individual industry and do some analyses to understand what is going on in those different industries because there's very different claims experience that happen within different types of employments.

The other thing that happens is that because of this more comprehensive data we have more formulas and more types of analyses that we can look at, so it kind of serves as a check and balance. When we create some projections, we can validate those projections and make sure that those numbers are in the ball park and that those rates really do reflect what each employer should be paying within those industries.

Two other key components going forward that will enable us to make the classification industry pay really what's happening in their industries, is the field audit which will be talked about after I'm done, which really allows us to put people in their proper classifications.

When people are not classified correctly,

the experience for that particular industry is not really reflective of what's going on, and as a result the rates may not be reflective of what's going on in that industry. By cleaning that up and also by making sure that we get the right payrolls for employers, is really going to help us make the right rates for those classifications.

And then at the same time other projects that will be going on because of this more in-depth data capabilities, it really provides us the inside as to what's happening in more detail in each of the different industries.

The second objective, and again this is an illustration, it's not really in your handout, but what we're trying to do is we're saying, okay, if I'm an employer and I have a certain claims experience, my rate is going to reflect how well I did. So what we're going to look at is what the employer actually -- the actual losses of that employer versus -- based on the actuarial models -- what we expect it to be. If that's lower, then that person's rate will go down; if that's higher than expected, then the person's rate will go up.

How can we do that? Well, again, it comes back to the fact that we have more data capability so that

we can have formulas that are more comprehensive and really are more responsive to each individual employer's claims experience.

At the same time we have the ability to break out different types of information within each industry. We can figure out and adjust how much weight do we give to each individual employer's own experience. How much do we want to limit large losses. That may vary between different industries.

We can break out losses into different categories, such as serious, non-serious and medical. All these different kinds of things are going to allow us to look at a more in-depth level at what is happening to each individual employer's loses and where they fit in relative to where they should be, and as a result credit the folks who are doing a good job and collect more from the folks who are creating more costs.

The third objective is to create a formula that communicates to you, the employer, what is it that's driving your cost. In keeping with the theme of today, we're here to try and communicate some things to you and we want to continue to communicate to you because we feel that it's so important for the employers to understand what is

driving the costs.

If that happens, we think that employers will be more responsive to trying to cut down their losses and implement better safety programs and essentially reduce the costs to the Division.

How are we going to do this? Well, what we'd like to do and what we plan on doing is breaking out the piece of pie that you pay and communicating to you what those different pieces of pie represent. Some of them you can control.

For example, claim costs, which is obviously the majority of your rate. We want to be able to put into buckets on your bill that says, okay, you're going to pay -- let's say your total bill is $10,000. Maybe $9,000 of that is because of your losses, $500 of that is because of administrative expenses which are incurred by the Division just to facilitate the process and work as an insurance company, so to speak, and also for other things such as deficit reductions to try to get the Division more fiscally in line with where they need to be.

There's other components too that may be applicable in the future. There's a couple rules that are out there right now, the QLMP discount, which is a

Qualified Loss Management Program, which really enables folks to get involved in some programs that reduce their risk and mitigate their risks and hopefully reduce their claims costs, and we're going to credit them to help subsidize those programs.

At the same time, there's a loss prevention surcharge which is on the other side, and that's when people who are not really doing a good job of safety and that kind of thing, and they're going to be hit with a surcharge to collect more from them. And the adverse risk assessment, which will be talked about later in the show.

The final objective is really to create a formula and a methodology that is more flexible and more adaptable to what is happening in the West Virginia Workers' Comp environment.

As Ed said, no more hocus-pocus. And really a key to that is that there are many parameters within this formula that are going to be determined by the folks who sit behind me right here. And they're a diversified group that represent not only employers but employees.

These folks are going to have significant input into the process, into some of these decisions which

really I think goes along the lines of full disclosure, helping you understand what it is that is involved in the process and how some of these decisions are communicated and how some of these things are calculated.

So we feel because of that we have some flexibility but in that flexibility the decisions being made are being made by people who represent you-all.

At the same time, we're looking for a formula that can serve as the foundation to supporting new products that are really tailored to better fit the needs of the employers of the state. And here to talk about some of those plans is Amy Graves.

MS. GRAVES: Thanks Chris. As Chris has talked to you about the flexibility in the current method to improve the ratemaking methodology, that theme continues throughout what I'm going to talk about, which is the alternative rating plan.

Before the rules that you have in front of you today and Senate Bill 250 and various other initiatives that are currently going on within the Division, we have not had the opportunity to provide alternative rating plans.

The plans that I'm going to talk to you

about are the deductible rating plan, two retrospective ratings plans, which are an individual retrospective and a group retrospective, and then the adverse risk plan.

All of these plans are described in the rule that has been handed out to you this morning in Sections 9 through 13. So if you want to look back through those when you go home, extra reading for you.

Just to clarify, however, that the two plans that are offered today, guarantee costs and self-insurance, will continue to be offered and become more or less the standard plans that are offered by the Division.

Before I get started, I thought about what I wanted to talk about today and I tried to think of all of you and figure out what kinds of questions you might have as this was being presented to you.

The three that I came up with are: What are these alternative rating plans and which one is best for me; and two, how can I be eligible for coverage under one of these plans; and then finally, once I'm covered under one of these plans, how do I know if I can continue to be eligible for such coverage. How will my status be reviewed. So with that, on to the first question.

What are these plans and which one is best

for me? You've already heard a little bit about the deductible plan. It's pretty much a standard plan in any insurance products, very similar to your auto insurance, your health insurance, your dental insurance. Really no difference. Basically, only difference is it's Workers' Compensation coverage and the deductibles that will be offered will typically be higher than the $50 and $250.

We would probably be offering a range of anywhere from $500 to several thousand dollars. And in return for the deductible that you choose then premiums would be reduced, the greater the deductible, the less the premium charge.

The basic advantage of this plan is that it allows for the smaller employers who may not have had an opportunity to take advantage of premium reductions through the experience modification factor to have the opportunity to select a deductible and provide them with premium reduction.

One caveat is, however, that because of the concept that an employer selecting this plan is basically self-insuring a portion of their risk, there will be some financial responsibility requirements. Depending on the size of the deductible, different levels of financial

information would be requested and reviewed prior to allowing an employer to be placed in this plan.

On to the individual retrospective plan. This plan's a little bit more complex but not too much. Basically, an employer who wants to be covered under this plan would have to meet certain premium requirements as well as certain loss experience requirements.

If an employer would decide to apply for this plan, basically what would happen is they would pay the standard guaranteed cost premium that would be charged to them based on their classification and their payroll. They would be covered also for a specified coverage period.

However, what would happen is at the end of that coverage period, if the employer had less than expected losses, the premium that they paid up front may be reduced just slightly at the end of that coverage period.

Conversely, however, if an employer had far greater than expected losses, at the end of the coverage period they may be assessed additional premium.

The primary advantage of the individual retro plan is that it allows employers that are expecting to make substantial improvements in their loss experience in a short period of time -- say for example, less than a

three-year period. So if you plan on making improvements in your loss experience within a year, you would have a greater opportunity to receive premium reductions at the end of that coverage period.

The group retro plan is really no different in terms of how premium is calculated and the concept of a settle-up period at the end of the coverage period.

However, it is going to be offered to groups of employers who fall within similar classifications. It can't just be Employer X and Employer Y. You have to be similar groups of employers who have similar classification codes.

One primary advantage of this plan is that it allows smaller employers the opportunity to group together and, therefore, have a greater impact on how their own individual premiums are calculated.

One other requirement of a group retro plan is that members of the group must be sponsored by a sponsoring organization that has been formulated primarily to assist in the reduction of claims costs and the administering of safety programs.

Finally, the adverse risk plan. As you can probably tell by the word adverse, this is not one you're

going to be running to sign up for. What the adverse risk plan has been designed to do is penalize those employers who have substandard levels of performance by way of premium surcharges.

And by substandard what I mean is employers that have failed to comply with the rules and regulations that are in front of you today in that rule. Other substandard measures might be employers that have continuously had far worse than expected loss experience.

Depending on the reasons for placement into the adverse risk plan -- and those criteria are, in fact, in the rule in front of you in Section 12 -- depending on the reasons for placement into this plan employers would be charged an additional premium percentage. That percentage would vary with the reasons for placement into the plan.

Now you may be wondering is there any benefit to employers. Obviously there's a benefit to the Division. One benefit, if you look at the pot of money that the Division must collect from all employers in the state, if you surcharge the substandard level performers, what that means for the employers that have consistently followed along and are going in the right direction, those employers because the substandard level employers are now

paying more into the pot, those employers complying would therefore pay less and then no longer be subsidizing the poor performers. Well, that's kind of an answer to the first question, what are these, which one is best for me.

You have a response sheet in front of you that we would like you to fill out. One of the questions in there asks about the types of plans that you might be interested in. We're really not trying to pigeonhole anyone into any one plan today. We understand that you haven't had enough time to really study each of these plans, but we're trying to get a feel for which ones of these plans have the most sense of urgency or the highest demand out in the marketplace. And it will give us some pointers as to which plan we want to start along and implement first off the bat.

On to the second question. Okay, I'm really interested in a deductible plan. How do I sign up. I want an application today. Tell me how to do it.

Basically what will happen as we move along with implementation and start implementing some of these alternative plans there will be applications that will be submitted to each employer.

The type of information that will be

required from employers would be such things as what are you currently doing, what is your operation, what is your financial standing. Other things might be looked at, what types of previous loss experience have you had. All of those things would be reviewed by a Division representative who would look at these things in order to make a determination as to which rating plan is best for you.

Once this application is submitted and reviewed the Division representative or underwriter would make a decision regarding the type of rating plan as well as the coverage period.

One of the things that the Division is currently considering is the possibility of offering alternative coverage periods. In other words, coverage periods perhaps less than or greater than one year.

Once the coverage period has been determined and the rating plan has been selected each employer would then receive documentation as to which plan they will be covered under for the subsequent coverage period.

Now there's also a flip side to the qualification process, and that is a mandate process. There may be, for whatever reason, depending on the

information provided on the application, a situation where the Division underwriter would determine that an employer would not be eligible for the plan that they're applying for and would, therefore, be placed in an alternative plan that has not been requested by the employer.

All mandates will be taken very seriously by the Division and would not go through without substantial review and approval. And again, the documentation of a coverage period and alternative rating plan will be submitted in the form of documentation to each employer. So that's a little bit about qualification and assignment.

On to the last question. Okay, I got approved for deductible. I've been covered for a year. Can I still be eligible for the deductible plan?

Basically what will happen would be there will be a series of reviews conducted. One such review would be a scheduled review. That typically would happen at the end of a coverage period.

What will happen is that the Division underwriter would review the activity that has happened on your policy, on your coverage. For example, have there been any significant losses throughout the period, has the

financial status changed, what types of operation is the employer doing, have they changed anything.

Based on that review, then eligibility or continuing eligibility would be determined and/or approved and then coverage would be -- documentation of coverage would be submitted to the employer.

Another type of review that might occur during the coverage period would be either based on the request by Division representative or based upon a request from the employer.

For example, let's say you're six months into your coverage period and you decide I'm going to purchase a new business or I'm going to start producing a new product line, things that might change perhaps your classification. At that time we would like for you to contact the Division, notify them of this change, and in response to that the Division underwriter or representative might determine that there might be a need for a field auditor to come out and look at your operation to determine if you're still operating within the same classification.

Another example of a review that might occur during the coverage period would be a review based on a request from a Division representative. For example,

let's say a claims representative within the Division notices that a claim has occurred on your account that really doesn't jive with perhaps the operation that we thought you were currently operating under.

At that time that claims representative might indicate that to the Division underwriter who then again might send a field auditor out to take a look at your operation and to make sure that everything is still as we understand it.

Basically any review of eligibility will be shared by both the Division representative as well as the employer. We don't want this to be a one-way street. We want it to be an interactive process and we also want to make sure that we include employers in the decision making process and make sure that everything is fully disclosed and communicated.

So that's a little bit about each of the plans, how you qualify, how you continue to qualify. And now Cheryl Ranson is going to talk to you about the field auditing procedures as well as the credit management policies and procedures that will help support these alternative plans.

MS. RANSON: What I'm going to talk to you about

today is what I consider to be a little bit of common sense that maybe we haven't thought about.

You heard Chris talk about rates, you heard Chris talk about how critical employers being in the right classification, how critical that is to ratemaking.

If you look at this first statement that you have in your handout, while we're conducting one phase of an audit we found that approximately one-third of the employers that we were studying in this pilot program were not classified correctly.

I guess what I'm here to ask you today is, do you think this is a problem? Probably those of you who are here today definitely think this is a problem. That's why you're here today.

Let's look at some of the things that could be happening out there. We've been all over this state, and as I came home yesterday evening from Elkins, I was reviewing some of my newspapers and I found that the State Tax Department had issued -- I don't know if you've read this article -- a license had been issued contemporaneously that someone in State Tax Department had listed as a gas station.

Okay. But we run across the same type of

problem. Loggers classified as truckers. Now I think you can see how that could happen. Right loggers? They drive trucks. But is that the same risk? That's what we're interested in Workers' Comp. Is that the same risk as someone who drives a furniture truck? Probably not, but they may be classified in the same classification.

Neon glass manufacturers classified as advertisers. This is one of my favorites. How could that happen? What are most of the signs made out of that you see in the store window? Neon. Right. If anybody's here in the chemical industry, do you think that neon gas is as safe as advertising? Advertisers might say yes but most people in the chemical industry would say no, it's probably a little more hazardous.

We have high risk occupations classified as clericals due to subcontracting. In the past when they subcontract, they used to subcontract clericals. Now with today's downsizing you can subcontract just about any occupation.

The last one, salesmen classified as manufacturers. We do this quite often. Businesses start out as manufacturers. Ten years later they develop their base. They don't want to manufacturer anymore, they just

want to sell, but they don't contact the Fund, so they're still paying manufacturers' rates.

Now we can take ownership for this at the Division and some employers need to take ownership for this. But what we're going to talk about today is rather than looking at the past, we're going to talk about what are we going to do about this.

We were at a hearing in Barboursville and a gentleman said, "Well, Workers' Comp is really like a big bag of jelly beans and everybody pays for that bag of jelly beans." And that's true. But what we want to make sure is that the people that are actually eating the jelly beans are the ones who are going to pay for those jelly beans. So that's what we're going to try to do. We're going to conduct some field audits.

When are we going to do these audits? Well, obviously we need to be able to assess an employer's true risk. That's the only way we're going to get to our goal of fair and equitable rates and our goal of you paying what you should be paying.

The second one, to ensure that employers are reporting payroll correctly. I would venture to guess most everyone in this room is reporting payroll correctly

and probably in the right classification. But does that mean that everyone is? Do you want to be the people in your class who are paying payroll correctly? You want everyone to report it.

Identify possible safety and loss control candidates. We are going to be doing preliminary safety surveys. There are a lot of people out there that run safe shops and there are a lot of people out there that might have some shops that might be accidents waiting to happen. And so we need to take a look at that and then we will pass that survey on to our risk managers and our safety directors.

Who are we going to audit? If you can look at that statistic, now that we have our new computer system, we're getting more data than ever before. And we found that approximately 4,500 employers represent 85 percent of our Workers' Compensation premiums.

Does anybody have any idea how many employers are in the state of West Virginia? Ed kind of gave it away in his introduction. About 40,000. So we're talking about 4,500 employers that we're going to go out and audit or about 10 percent, a little over 10 percent of the employers that make up 85 percent of our premium.

Just think if we could get that much premium in the correct classification. And then let's say that of the remaining 15 percent of the premium, two-thirds of those employers are classified correctly. So now we're up to probably about 95 percent of our premium that's correct. Just think what a big step that would be to getting our rates more fair and equitable.

We're also going to look at classes that have a history of under reporting, default or misclassification obviously. And the last thing I want to point out to you on this slide is, you'll notice that we're also going to audit people with requests from various sources, but with request from employers.

I cannot tell you how many telephone calls I get a day from employers telling me that XYZ Company down the road is operating a business and they're not paying Workers' Comp and they can't be competitive with them. So I refer them to our fraud unit and they say, "Oh, well, I don't really want to tell on them."

Okay. We can't correct what we don't know is going on out there. So I encourage you to do that because in essence if you do not do this and you know this is going on, you are partly responsible for your rates

being incorrect because you're allowing this to go on, and you will be paying for these people if they get injured.

What are we going to do with this audit? I hate to use the word audit. That has such a bad connotation. I'd like to use the word verification but I know you're going to say it's an audit anyway.

What we're going to do is, we're going to look at the premiums and see if you reported the premiums correctly, look at your payroll. Did you report the proper amount of payroll, did you report it in the right class. We're obviously going to do a classification study in our preliminary safety review.

How are we going to do this? You know, 4,500 is a lot of audits. Although it's really a small percentage of the number of employers that are out there it's still a lot for the staff that we have at Workers' Compensation. So through the RSQ process we are going to contract with CPAs and PAs to do these audits. So these are the actual individuals that will be going to the 10 percent or so of our employers.

We will have a small internal staff who will manage these audits. They will assigned the audits and they will review the audits when they come in, sort of

act as a liaison between the employer and the contractor.

When are these audits going to start? Because this is so critical to ratemaking and because as you well know rates were frozen this year so that we can work on our new ratemaking methodology and our pilot program, we're going to start these in January 1997.

And then once we get through this initial 4,500 or 10 percent or so, get our premiums in the right classification so that our rates start making more sense, then we're going to do some regularly scheduled audits.

Where is this going to happen? Obviously this has to take place at the employer's location. That's the only way we're going to be able to determine what your risk is, if we can come out and see what you're doing out there.

The next section I'm going to talk about in the rule is really Section 14 which is our receivables management section. And these are some questions that came to my mind as I've been thinking about Workers' Comp and what's going on with receivables management.

And the first one is -- and this is probably a favorite question of some of you out there -- wouldn't it be nice if Workers' Compensation could shift

premiums from those who are willing to pay to those who should pay.

Probably most of you again out there are the ones who are willing to pay and you've been doing what you should do. Now wouldn't it be nice if we could shift that burden to the people who actually should be doing the paying.

Wouldn't it be nice if we could be proactive rather than reactive with employers that we think might be potential problem employers.

I don't know, I guess there's probably a lot of people out there that might be accountants or work with a receivables management of your company. Do you treat, for receivables management purposes, your customers who are bad credit risks the same as you treat your customers who are good credit risks. If you say yes, you're probably not going to be in the business long.

No. We don't do that in private industry, and this rule's going to give us the chance to do this in Workers' Compensation. And wouldn't it be great if the Division could earn more on our investments because the more we earn on our investments then the less that we really have to collect from employers to cover the costs.

Does this rule or will this rule allow us to do these things? Section 14, we believe of this rule will allow us to do this. How?

There's two main parts to this section. First, we're going to assign each employer a tax liability rating or a credit rating, A, B or C. That's never been done before.

You could default with the Division X number of times and you were still treated the same as a gentleman that I had talked to, his company had paid for 70 years and was never late and never missed a payment. Well, that's going to change with this rule.

And the Division will determine the frequency of those premium deposits. Again, that's going to help us in managing our receivables.

Just briefly on this credit rating. Again, back to common sense. If you were looking at the credit rating of a company you would look at some things such as their financial statements and so forth. But one of the areas that I want to point out to you is this other factor that can be considered, because those are sort of the intangibles.

What type of business are you? Are you in

a declining business, are you in a business that is thriving that's ready to take off? What kinds of history has your managers or your management had with the Fund? Did you start a business and not pay your comp, shut the business down, start it up, not pay your Comp? What kind of history is that? This rule is going to allow us to shut down that loophole for employers.

One of the other things on this slide, I want to point out, I've had in my travels across the state many small employers ask me, you know, I'm a small employer but there's no way that you can give me a $100,000 credit line, but I'm a good credit risk. And that is true.

Notice this says, tax liability is not to exceed $100,000. So a small employer still could have a good credit rating. Their tax liability would not be as large as $100,000. They could be an A credit rating employer and only have a $5,000 limit. And these A and B and C credit ratings will come into play when the employers look at what types of plan that they're going to go into.

As you start reading Section 14, if it sounds a little confusing to you, go and talk to the people who are doing your payroll, talk to your CPAs, because these deposit rules were taken from the 941 deposit rules.

Somebody's laughing in the back. They must have recognized that already.

Get that circular out. You're going to find the same type of language, "safe harbor" and the whole nine yards. So talk to your payroll people.

Here's something I want to point out the Commissioner talked to you this morning about. For those who pay $500 or less for the fiscal year, you will be paying annually. Now again, in my travels around the state, I've had a lot of small employers come up to me. I had one -- where was I was -- in Wheeling that said that his Workers' Comp premium was $2.50 a quarter. And then they added whatever, the 25 or $50 to that, he had to pay every quarter.

This individual will be paying at the beginning of the year. They will not be filing a quarterly report, and then at the end of the year they will file an annual report and settle up.

Now if you think that might encompass 13,000 employers out of the 40,000 employers that might be doing this, think of the paper work that that's going to save the employers and it's going to save the Division.

The other thing I want to point out is,

notice as we get down the road for A, B and C, we want our money from the C people faster. If I think you're not going to be able to pay me, then I want my money now and that's what -- Right?

SPEAKER: Daily.

MS. RANSON: You're out of business. It's not even to the point where we're talking about necessarily bad employers. It might be a bad time in the business cycle. They might not have the cash flow to make that quarterly payment but they do have the cash flow to make a weekly payment. Of if they make that weekly payment and then the gas heater or whatever breaks down, then they'll work with the gas company to get that, but we'll still have our Workers' Comp premium, so. Notice again, lower credit rating, we want our money faster from you.

This can also present -- some of the though extreme cases, some of the employers that you've read about in the paper, about people who have run up large amounts of debts. If someone is supposed to be paying us weekly and they miss that first weekly payment, think how much quicker we can start working with that employer than if we had to wait a quarter and then another quarter before we could with them.

The next two slides, I'm not going to go over, the ones that look like this that you have. These are very similar to the flow charts that are in your IRS 941 deposit book. So you can look at those at your leisure, talk about them with your accountants.

We do offer "safe harbor." You're probably out there thinking what if I mess up and I don't deposit enough money. We do have -- as long as you deposit within, say, 98 percent of the amount, we do have a makeup period and you can pay us the remainder.

I do want to remind you that if you miss that safe harbor amount then your shortfall will be subject to interest and penalties.

The last matter, just some questions that as I was reading it and I thought, well if I were an employer what would I be asking as I was reading this section. And the first one is, okay, you're telling me I have to deposit more frequently and I have to go to the bank to make my deposit. What if the bank's closed the day that I have to make my deposit.

Okay. Well, I would say that common sense would say that your deposit would be due to the next day, but I know sometimes we don't necessarily have that common

sense in state government. So I'm here to tell you that we are going to consider your deposit timely if it is in by the close of the next banking day.

Accrued wages included in the payroll tax liability computation, no. We're talking about cash payments to your employees.

And this last one which is very timely for those of you who have been reading the paper, and you probably dealt with that, the IRS is going to electronic funds transfer. And is the Division going to move in that direction? Yes, we are, but we have to get this deposit in place and get all the bugs worked out and everything going smoothly before we do that. So we will be moving in that direction but after a phase-in period.

Now Ed Staats is going to talk to you a little bit about what you can anticipate in the future. I would like to say that I know now that you've been here for an hour or so and I know you've memorized all 61 pages of that rule and you know exactly which premium plan you want to pay, but we will have educational sessions for you coming down the road specifically geared to one, ratemaking; and two, which plan is the best for me. So those will be coming, but we don't expect you to make that

decision today.

MR. STAATS: First of all let me give you -- Cheryl mentioned the impact of a few items in the rule on employers. For example, the $500 or less provision in the rule will impact about 13,000 employers.

Another piece of information that you need to be aware of, we talked about we have 4,500 employers that account for 8,500 percent of premiums. And those employers are going to be our first audited. So if we extrapolate from the pilot audit program and the conclusions that we reach from that program, that we've already performed, we believe that that extrapolation indicates that there's $15 Million a year annually in cost shifting as a result of improper classification among that 4,500 employers. That means that those of you who are in the right classifications are making up that cost shift in your rates.

Does anybody remember the ketchup commercial from several years ago with a white background on television, a bottle of ketchup turned up side down, Heinz Ketchup, I believe, ketchup just kind of oozing out it? Carlie Simon, I'm dating myself, singing in the background "Anticipation." Well, that's what you can

expect on the implementation of this rule.

Sections 19, 1 and 2, I think it's Page 60 talks about the implementation and the phase and the period of implementation. Because even though over the past several years we've drafted changes in claims management, in financial reporting, in receivables management, we've upgraded technology, we've upgraded the skills of our people, we've redesigned processes, we followed a constant vision of the development of a better West Virginia Workers' Compensation system, those foundation pieces so necessary to implement this financing plan has still not corrected all the obstacles that we face in order to bring better value to our stakeholders.

Those obstacles still include the critical need to clean up information. For example, the field audits. A critical need to able to support a very sophisticated technology system, a critical need to change our existing complement of human skills to include risk management and insurance skills, a critical need to communicate to our stakeholders and educate our stakeholders as to the impact of their actions on this system.

We can't do this overnight. The obstacles

to successes is very, very great but we can achieve success. It has been done in other states. Washington, for instance, is an example. The state of Washington was in as bad of shape, if not worse, than the state of West Virginia, and it took them ten years.

The Fund now is so much more capable of being able to implement a sophisticated financing plan than it ever has been before with the right tools. Do you know how to speed up that ketchup, you've got to use the right tool. You take a table knife and you run it up in there and twist it (indicating).

We're putting the right tools in place to implement it. We have been putting the tools in place. And every one of our successes, and if this is successful, and it will be, will bring about its own unique set of problems.

There will be some additional mischief created in the Workers' Compensation system as a result of implementing this program. That mischief will challenge you and the Fund.

Employers, for instance, are going to be inundated with proposals from organizations developing loss control programs offering associations with plans to

include the administration of the various types of financing alternatives that you've seen.

Employers are going to have to judge these proposals on a what's-in-it-for-me basis, who will do the best job, what are the services you're going to receive, what kind of reports do you have to file, what kind of criteria do you have to maintain, what is your risk of being part of a group.

For instance, this rule has a concept in the group policies of joint and several liabilities for Workers' Compensation. What are the costs of being part of that group and how will that impact your total investment in loss control.

In addition, this rule requires the exercising of informed, skilled, judgement by Fund personnel. Failure to do so will create inequity beyond those we are trying to cure. This rule requires adherence to new policies, procedures and methods by employers and their representatives as promulgated under the authority of the Performance Council with adequate safeguards built in for review and reversal of those improper judgments or abuses. Failure to develop those safeguards is going to create additional mischief.

The successful implementation can generate significant benefits for the employers and employees of West Virginia, the most significant of which is the opportunity to share what's happening all across the country.

There are stories and examples of successes where employers and their employees working together have prevented injuries, have reduced their Workers' Compensation costs and have shared the benefits.

The Commissioner says we have about 70,000 claims a year in West Virginia. That has held relatively constant for several years.

What happens to this system if we're able as a result of the incentives built through this rule to reduce those costs by 10 percent, 20 percent, 30 percent. And those kinds of reductions are not unusual in other jurisdiction. They have occurred and we can do it. This rule encourages the development of those successes in this state.

The benefits to the state itself, for all of us, are a more financially viable West Virginia Workers' Compensation system that thereby improves the overall state's financial health. Workers' Compensation, the

deficit we face impacts the state's credit rating. The state's credit rating impacts what you pay in any personal income taxes.

This is a win/win approach for everyone except those who do not attempt to control and prevent injuries in this system. As under this rule, they will be responsible for paying the cost of ensuring their risk. This approach is not intended to allow the shifting of that risk to other employers within the state.

The most important objective of what we have attempted to accomplish so far starts with "create a frame work." That's what this rule is. We do not have all the answers in this rule. We don't know all the answers. That's why the implementation phase is going to be done very, very carefully.

We think we're headed in the right direction, we hope we're headed in the right direction. Indications from prior hearings indicates that we are headed in the right direction.

Randy is going to talk to you now about some common questions we've experienced and if you have additional questions, please ask them. Randy.

MR. SUTER: Wow, big crowd. Nice crowd, I think.

We'll find out here in a little bit. During the previous six public hearings, the Risk Management Team has heard quite a number of interesting questions and we've provided some responses that I'd like to share with you.

When we were in Parkersburg, a small employer asked, "Hey, what about the self-insurer requirement that you have at least a minimum amount of a million dollar bond in order to be self-insured. That prevents me from becoming insured. I want to be self-insured. What can I do?"

Well, number one, we don't want small employers to be self-insured. You don't want small employers to be self-insured. And if the small employer realized it, he wouldn't want to be self-insured.

I suppose you might ask why, and it's pretty obvious. One severe Workers' Compensation claim can cost hundreds of thousands of dollars. I was working on a head injury case not all that long ago where an individual had $300,000 in medicals alone.

Obviously there's going to be a whole lot of other money paid out to try to rehabilitate that individual or in benefits paid to that individual over the course of their lifetime for various treatment.

I saw another instance where a gentleman had some severe electrical burns and he ended up losing both hands over the course of time. This was quite a long time ago. There are certain rehabilitation that goes on with those types of injuries. Of course, there's statutory permanent and total disability awarded in payouts that last over the course of time.

A small employer doesn't want to be self-insured and be responsible for those debts. So let's say we allow them to do that. A severe injury occurs, what would happen with the claimant if the employer couldn't pay? Then what would he do? Probably file bankruptcy and then who would pay it? The Fund would pay it. Right, the Fund?

Well, you know, who is the Fund? They're going to a couple weeks from now, get a paycheck, are you going to take a little extra little bit out of mine? No, the Fund is. Everyone that's sitting in this room that's an employer, that's who pays. That's why we have to implement these carefully.

We don't want you to pay unless it's your risk. Well, we're spreading the risk over someone whose also paying the premium.

Some other questions specifically about certain points of -- by the way, an alternative for this particular person would have been a deductible plan where they could be responsible for a particular limit under each claim as opposed to everything, in case there was a catastrophic injury.

Why is the deductible plan a reimbursable deductible? I'll assume you haven't read all 61 pages while you've been sitting there. The reimbursable deductible means that the Fund pays the deductible to the individuals, to the claimants, for example, who may make a claim, be injured on the job.

Let's say you had a $2,000 deductible. We would still make those payments as we normally do and then the employer would reimburse the Fund.

Why is it that way? Primarily, to protect the claimant. And some employers may not want to pay. Some employers, depending on the size of their deductible may not be capable of paying, depending on how their business has gone recently. So we want to protect the claimants in this instance.

The second reason is we want to track their experience. We track the experience of self-insured

employers, we surely want to track the experience. We don't want payments directly being made by the employer that we never know about when the claims are not filed. We want to be able to track their experience.

We want to know what kind of risk employers are. They may want to know the product line at some point in time. We may have to assess their risk accordingly.

Why are there security requirements for the deductible plan? Depending on the size of your deductible obviously our requirements for security will vary. You'll want a $20,000 deductible per claim and we look at your history, you may have to forward substantial security to us.

Small deductibles, we're not going to price them now -- people as far as the amount of security that you have to post.

When will this rule be implemented? You've heard a little bit about that. I want to go over it briefly because we've heard a couple of different comments.

For the most part people seem to be saying, "Where do I sign up," and you've heard Mr. Staats talk about the ketchup coming out of the bottle sort of slowly. We've had that. We've also had a couple people get up and

say well we think you ought to delay this for a substantially longer period of time.

Number one, the legislation that's earlier talked about, Senate Bill 250, requires us to put in place a system such as this, and this is our attempt in doing so. The Performance Council has put the date of November 1st on prior to the election date. We don't want this affected by what goes on particularly in the future. November 1st was a carefully selected date. It transcends the political climate. It's too important for the employer in West Virginia.

One question that I had some difficulty with because I didn't understand it. An employer got up and said if you're going to redesign how you calculate rates, how is this going to affect my positive balance? I just didn't understand that. I had no idea what they were talking about until I realized what the gist of his comment was.

Is there any other insurance that you buy, your car insurance, for example, where you get a statement at the end of the year that says, "Here's what you paid in. Here's what we paid out." No. You've bought the cost of insurance for a year. We've been guilty, I suppose, of

miscommunicating to employers all along that there is some type of positive balance out there when in reality may have paid the cost of insurance for that period, just like with any other insurance.

We had an interesting comment in Glayde Springs regarding the group retrospective rating plan in the amount of premium, the gross amount of premium required. It's $500,000 currently. We picked that up out of another state that has this type of plan.

We're reexamining that, and I would suspect that you're going to see there's going to be some substantial reductions in that. That's been a pretty consistent comment.

We've had a couple questions with regard to what period will be used for my experience rating. As the rule is currently written there is a three-year period. However, we are going to reexamine that and look perhaps at alternative periods depending upon various classifications and their risks. They may be longer periods, they might be shorter periods, depending on the risk involved, and we're going to take a look at those accordingly.

And the question comes up, what about old claims that fall outside this experience period that we're

looking at? What's going to happen there?

Your know, normally we've given you a cash statement. We've done cash accounting here. We're going to look at what was paid out this year. We're not going to do that so much anymore.

So what's going to happen with these old claims that fall outside the experience period. Are employers going to want to fight these claims? Perhaps in many instances they won't want to fight these claims. And that might create a little mischief.

However, you should also consider the following, there's a limited universe of old claims, all be it a very big limited universe. The second question is, I'll pose the second question: In what percentage of these claims are the employers represented now? I don't know. I think that's probably some good data that we could acquire.

Third, self-insured employers will continue to fight claims because they're going to be involved with the direct payout.

And four, the Workers' Compensation Division through the offices of the Attorney General are actively litigating claims on behalf of the Fund.

If the Division believes that the system is

being manipulated with regard to the reopening of old claims as opposed to filing of new claims, the Division has a claims litigation staff that we could pursue with.

The last question that I'll cover is something with regard to the Division. What is the Division doing to reduce premium costs? There's a litany of things, and I'll hit a couple of them.

Claims are now being managed in a more efficient manner by the use of a claims teams. There used to be an assembly line process. Now teams are devoted to specific geographic areas and are looking at claims from beginning to end in the team approach. That helps a lot.

You don't have this person over here sending them on to this person who sends it on to this person, and then no one knows what has really happened to the claim over the course of time.

Workers' Comp is taking a more active role in the investigation of employers and claims. We have a larger investigative staff, we also have a prosecuting attorney on staff.

Workers' Compensation is promoting safer work places through the Qualified Loss Management Program Rule and the Loss Prevention Rules which will be out --

have been out for public comment, have been revised and we're awaiting action by the Finance Committee and the Performance Council currently.

The fourth thing which is pretty obvious, is we're developing this rule to make sure that the employers who are responsible for the cost of the system pay for the system.

Now we want to ensure through ratemaking and other measures that the employers incurring the costs pay the rates. At the same time, we'd like to reward those employers with good safety performance through multiple policy options and decreased rates.

Please note, there is a survey that you have, please fill it out. We would like to get copies of that. I chased someone down the hallway at Barboursville. I don't think they appreciated it. I won't do that here, I promise, but don't make me beg.

With regard to questions and answers, I would like to make a couple of comments here. This isn't the public comment portion of the proceeding. You're going to have the opportunity to address any -- if you want to make a statement, you'll have that opportunity. I don't want to deny you that.

This is more of a little question and answer session. Please identify yourself clearly and state who you're affiliated with. If you'll notice Ms. Vorholt up here is the court reporter and she has been recording the entire proceedings. Please, we want your name, we want your affiliation. Do me a favor, please, no six-part questions. I've had a couple of those. I'd prefer them nice, one-part question. That helps me out a lot. Do you have any questions? All right, public comments. Yes, sir.

MR. MCCLURE: My name is Joe McClure. I'm with Chemical Valley Lumbar Company, and one of the questions that I've run across is, can you have two classifications?

MR. SUTER: There are provisions in this particular rule with regard to classification. Generally the Workers' Compensation system has worked on a unified classification system where you get one classification. There are certain instances outlined in this rule where you might qualify for multiple classifications.

However, be careful what you wish for. There are some employers who have gone down the line and said, okay, we followed all your criteria. We want multiple classifications. We want our clericals over here, we want our heavier industry over here, we want them

segregated. Well, sometimes when that happens your payroll is increased through your experience and your mod factor might go up in the higher group. You might end up paying more. So be very careful for what you wish for, because that's happened from time to time. Yes, sir.

MR. ST. JOHN: My name is Fred St. John. I'm with -- Wholesales. In trying to compare the retrospective plan to the self-insurance plan is there a stop loss provision in the retrospective plan where it's really not open/ended, depending on the claims that you have for a given year?

MR. SUTER: Well, we're trying to get away from the year. We're going to go to periods because those might vary from year to year, you know, they might be different periods.

In any event there should be a range of premiums. Let's say if you look at a retrospective premium as -- here's what you're paying currently. There's a minimum premium that can be paid and a maximum premium that can be paid. Depending upon your losses and this range, if your losses are going down, for example, you would probably -- a retrospective premium plan might be good for you because then you might end up paying less premium. If your

losses go up on the other hand and you've entered into a retrospective premium plan it would go up to a maximum. Any other questions? Yes, sir.

MR. ROLLINS: My name is John Rollins. I'm a CPA here in Charleston, and I work mostly in small business. I can understand the Division's administrative need to offer some of these options to the larger employers but would it be possible for -- and I'm just using this as an example, if the Kanawha Valley car dealers went together, and of course they could afford to purchase more safety equipment or safety training -- I mean, in association, and then conversely maintain their premiums, could they as an association take advantage of some of these -- the other options that wouldn't be available to them individually?

MR. SUTER: Oh, I would think so with regard particularly to a group retrospective rating plan. They ban together, they spread their risk among themselves and you go -- in the same way I just discussed the individual retrospective premium, the group retrospective premium works the same way. There's a range of premium that's paid out. There's a minimum, a maximum and here's what we would have had normally. Other questions?

(No response.)

MR. SUTER: Thank you very much.

COMMISSIONER RICHARDSON: I want to thank each member of the staff, Ed, Cheryl, Chris, Amy, Randy. Can we give them a hand.

I know that this is now clear as mud for each of you. What we would now do is move to the public hearing portion of the program. This is an opportunity for you to provide your thoughts, you to provide your comments. As you came in to the room today hopefully you signed a sheet that looks something like this (indicating). If you didn't, we'd like for you to. In fact, by the way we have about 125 people here today, a tremendous turnout. I see Judy King from the City of Charleston here and I'm sure that people estimate the crowd for the Regatta will say there's several thousand.

I have three individuals who have marked the comment form as desiring to provide comments today, and the first person is John Hodges. Mr. Hodges, if you'll come forward, offer your name and affiliation and any public comments, we would appreciate it.

MR. HODGES: Thank you, Commissioner. I want to thank the Performance Council and staff and the Commissioner for all the hard work they've done on this

rule. I think it's a real possible thing to employers in the state.

As far as my representation, my name's John Hodges. I represent the National Federation of Independent Business in West Virginia, and our small business members, I think are very positive over this new rule.

We've already spoken at the one hearing and addressed some of the concerns we've had and some suggestions that we will make and we have written comments prepared to turn in today.

One of the concerns we had was the deductible plan, the security and bonds. We just wanted to make sure the Division makes security requirements simple and reasonable enough so that small employers could take advantage of the deductible plan.

There were two concerns that we had as far as the group retrospective rating plan. One was how the classifications will fit into the possible group rating or a group plan that we might even consider putting together at the present time. We looked through the classifications within Workers' Compensation and we see like something like 259. I think those are modified codes but the governing classes, I think represent 91 groups, which may be in our

opinion a little high as far as trying to get a group together to benefit from this program.

The other concern that we had, and we did address this at Glayde Spring, was the amount of premiums needed to provide for a plan, and that was, I think, in rule of 500,000. We felt if possible that should be reduced, and the obviously there's been some discussion over that and we certainly appreciate it.

Those, I think are the main concerns that we have. We do -- NFIB does have a program in Ohio under their program and I think we've had some experience with that, which it's been very positive. And once again, we want to thank members of the Council and the staff and the Commissioner for all their help. Thank you.

COMMISSIONER RICHARDSON: Members of the Council, questions for Mr. Hodges?

(No response.)

COMMISSIONER RICHARDSON: The only other block that is checked as desiring to comment today is next to the names of Corless and Barbara Ferguson. Are they here?

(No response.)

COMMISSIONER RICHARDSON: I will assume that Corless and Barbara Ferguson do not wish to testify then

today.

Having had an opportunity to hear the presentation today, let me open the floor for anyone to reconsider their decision that they made when they were signing in today and offer you the opportunity to provide public comment at this time.

Would anyone care in reconsideration to stand up today and make public comment regarding the proposed regulations?

(No response.)

COMMISSIONER RICHARDSON: Let me say thank you very much for being here today. I hope that this has been informative and educational for you.

Again, the time table, comments to Mr. Suter by October 8, 1996, close of business, 5 p.m. We appreciate your interest and I hope that you find these new products to be useful for you in your business. Thank you.

(Whereupon, the public hearing was concluded at 11:45 a.m.)

REPORTER'S CERTIFICATE

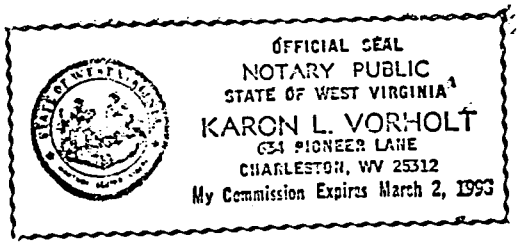
STATE OF WEST VIRGINIA,

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 4th day of October, 1996.

Karon L. Vorholt
Certified Court Reporter



ORIGINAL

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 Charleston Civic Center, Room 206, 200 Civic Center Drive, Charleston, West Virginia, on the 27th day of September, 1996, commencing at 10:05 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

Gene Bailey

ALSO PRESENT: ANDREW N. RICHARDSON, Commissioner
Bureau of Employment Programs

RANDALL B. SUTER, Counsel
Legal Division

COMMISSIONER RICHARDSON: Thank you for coming out today for the seventh of eight public hearings throughout the state of West Virginia regarding the proposed changes in the ratemaking and underwriting system employed by West Virginia's Workers' Compensation Programs.

This is tremendous crowd. Obviously larger than we anticipated, and we really appreciate your attendance and hope that this morning's session proves to be informative and educational for you.

Do we have additional packets for those who don't have packets? Anybody that does not have the handout -- you should have three items. You should have a handout that looks like this (indicating), that says "West Virginia Worker's Compensation Division, Public Hearing Presentation;" you should have an item like this (indicating), that is the ratemaking proposed rule on ratemaking. It's actually entitled "Risk Management."

To put it in street terms, this is the book, this is the reader's digest version. Then we have an evaluation form, and we would very much encourage each and every person in attendance today to take time to complete the evaluation form and provide us with the feedback.

My name is Andy Richardson. I'm the

Commissioner of the West Virginia Bureau of Employment Programs, and we are here today to talk about the most fundamental change in the ratemaking and underwriting activity of the Workers' Compensation system in West Virginia in its entire history.

Up to this point West Virginia's employers have had two options available to them for financing their Workers' Compensation Programs. The vast majority of employers in the state are what we call subscribers to the Workers' Compensation Fund.

We might think of them as policyholders of a guaranteed cost insurance program where a premium is paid by the employer and the Workers' Compensation Program pays first dollar for any cost associated with work-related injuries and illnesses.

The second is self-insurance. And for those employers of sufficient size, employment level, payroll level, financial capability, safety and accident prevention programs in place, they may be granted the opportunity to self-insure their risks.

Now there are a number of problems with this current system and one of the fundamental changes made by the Legislature was Senate Bill 250, in 1995, which

deals with ratemaking and underwriting.

The provisions regarding rates completely rewritten to require the Compensation Programs Performance Council and the Workers' Compensation Division to develop a new system that would offer policy options, if you will.

Now today we're here to talk about that and to get your input on the proposals. The process today will be two-fold. You will first hear a presentation from our Risk Management Team regarding this entire subject matter, what we hope to accomplish.

We will have a question and answer period. Having done six of these up to this point, we will anticipate some questions and respond to them in the question and answer period and then see if it stimulates some other questions on your part.

We will then move to the actual public hearing side of this activity this morning. In the public hearing you will be given the opportunity to comment formally on the record to the Compensation Programs Performance Council about these proposals.

Now the Compensation Programs Performance Council was created by the West Virginia Legislature in 1993. It is a labor management body that has governing

oversight relative to Workers' Compensation policies and directions.

This is made up of four representatives of workers, four representatives of employers and myself. I'm the man in the middle, so to speak, as Commissioner of Employment Programs.

Now these guys always do this to me because as you look at them, most of the business folks are sitting to your far left and most of the labor folks are sitting to your far right. I'm here to tell you where they sit is not necessarily where they stand.

So I'm going to introduce these good people. At your far left is Gene Bailey who represents coal employers; next to Gene is Thad Epps who represents manufacturing employers; next to Thad is Everett Sullivan who represents construction workers. Following on across the table, Chris Jarrett. He represents employers generally, being a nominee to the Council from the West Virginia Chamber of Commerce. Paul Thompson represents manufacturing employees, and is a former steel worker; and Fred Trucker represents coal miners.

Now the Compensation Programs Performance Council is divided into two committees, principle

committees, a Claims and Administration Committee and a Finance Committee.

The Finance Committee has worked with the staff on the development of these regulations and authorized them to go forward for comment. Public comment is open until October 8, 1996, 5 o'clock p.m.

You'll note right here (indicating), the last day for written comment is October 8, 1996, 5 p.m. The address, Randall B. Suter, Counsel, Legal Services Division, Post Office Box 3922, Charleston, 25339-3922. If you would like to call and talk with Randy about any of these matters, the telephone number is listed.

What you will hear over the next few minutes, I'm going to provide a very brief summary, operating under the theory that if you hear things about three times you'll retain it.

You're going to hear about field audits and a changed approach to ensuring the accuracy of payroll, the appropriateness of risk classification and an initiative that will be undertaken to do a better verification job in this category across the state of West Virginia. It is fundamental. It is the foundation upon which this entire underwriting project must be based.

You'll hear about safety and accident prevention, a second key part of the underwriting and ratemaking process. I think it's safe to say, I think it's fair to say that West Virginia's Workers' Compensation system has historically done a fairly poor job of emphasizing safety and accident prevention. The incentives have not been there adequately in the current ratemaking design.

We hope these proposals in conjunction with other regulations that are currently under consideration by the Performance Council will mark the dawn of a new day in the way workers and employers throughout West Virginia view work-place safety.

Folks, we have about 70,000 claims filed every year in this state. We're a state with about 720,000 people in the work force. Now where I come from that's just too many and we've got to reduce the accident and we've got to have a system that does a better job of promoting accident prevention, safety and loss management.

Now the third area you're going to hear about is the actual policy options. Again, currently two policy options, regular subscriber or guaranteed cost program, self-insurance.

You'll hear today about a plan to segregate particularly bad risk employers into an assigned risk pool within the Workers' Compensation Program so that their bad performance doesn't continue to push the rates up of the good performers.

Hear what I'm saying, that means that the bad employers through this plan, their rates will probably be going up; good employers' rates, even if we didn't do anything else, probably be going down or may be going down. All right.

Retrospective rating is a second policy option. There's really two types of policy options here, one for individual employers and the other for groups of employers. Now without getting into the details of it, basically that's a settle up at the end of the year type of program. Okay.

We, in conjunction with the employer, would project what the cost would be for the policy year and if the cost to the employer were actually greater, then the employer would owe us additional money at the end of the policy year, and virtually if the cost to the employer was less there would be a rebate.

And the last option would be deductibles.

And I think everybody here knows how deductible works. If Everett Sullivan and I were driving the exact same automobile, and we don't. He drives a real nice automobile. I drive a Chevy Corsica. If we drove the exact same kind of automobile, had exact same experience, driving records and so forth but I had no deductible and he had a $250 deductible, who's paying the lower premium? Everett. It's pretty simple. And that same fundamental concept can apply to the Workers' Compensation Program.

Now the fourth general component of this has to do with collection and accounts receivables management. You know, a few years ago when I came into this business, what we found was remarkable. We had no chief financial officer, we had no collections system in place, we had no program to manage accounts receivables.

We've put those things in place now. We're doing far better than we were a few short years ago. However, we know that we can prevent a lot of folks from getting behind on their bills if we have a series of analyses on their credit risk -- just like any of the other potential financing system would have, like a bank would have -- if we analyze folks and classify them relative to their credit risk, if we offer many employers across the

state the opportunity to just pay once a year, to pay up front because they have a relatively low premium level, if we offer monthly instead of quarterly payments to help on the cash flow for both the employer and the Workers' Compensation Programs. These are some of the things that you'll be hearing about today.

We're talking about, again, fundamental changes in the way West Virginia's Workers' Compensation system is financed and how our unfunded liability is financed and what kind of incentives we provide for employers and workers to work together to keep accidents from happening.

And I want to offer a word of caution. This is not going to happen overnight. This is going to take a considerable higher level of skills and resources than we currently have available.

We will have to build the infrastructure to accommodate this within the Workers' Compensation Division. And it is a significant undertaking, but we can do it.

The game plan right now is for the Council to get all these different comments in and to make decisions on this collectively, hopefully by the beginning of November.

Okay, does that mean that November 1st, the world's going to change? No. What that means is that it will set up a mechanism for an orderly transition from the current system that we have in place to a new environment with multiple policy options. And we envision that being about an 18-month process. That's when you'll really begin to feel major changes.

Now I'd like to introduce the folks that are going to be making presentations here over the next 30 minutes or so. Ed Staats, our Chief Financial Officer with the Workers' Compensation Division; Chris DeAngelis, he's hiding from me over here in the corner, has been on the Risk Management Team; Amy Graves, I guess it's Friday. I should quit picking on Amy. Amy is a Purdue graduate. We had some fun with her last week on the public hearings with Amy, more fun this week with the outcome of the game. Do I have anybody on staff from Maryland? Again, a part of the Risk Management Team. Cheryl Ranson, part of the Risk Management Team, and Randy Suter, over in Amen corner. He's the fellow who is listed to receive your public comments. So with that, I'm going to step out and see if I can make this room any cooler and welcome Ed to the mike.

MR. STAATS: Thank you, Commissioner. We

appreciate the interest that this Risk Management Rule seems to have generated.

For those of us who have been in business and recognize and solve problems can't quite understand why folks like you would show up in a room like this to hear about Workers' Compensation in the state of West Virginia. There must have been some problems with it at some point in time.

We want to welcome you. Series 9 is a financing plan. It represents another milestone along the way, along the road that we have selected to solve the problems of the West Virginia Workers' Compensation system. We want to improve this system because this system has an economic impact. It has a significant economic impact.

In general, the economy of West Virginia is predicted to continue climbing in the future. Real growth state product is forecasted to rise at about 2 percent a year. Total non-farm employment is expected to grow. Unemployment is expected to decline. Real personal income is anticipated to grow at a rate of about 2 percent a year. And there's going to be a decline in transfer income due to efforts to solve the federal deficit.

All of this will impact West Virginia.

What this rule is intended to do, one of its objectives is to make the Workers' Compensation system an asset of economic development, not a detriment. It impacts all of us. It impacts the employees in this states and it impacts the employers.

The direction that we have established in this rule seems to have generated a substantial amount of agreement. We sent 40,000 of these little brochures out, and here's some of the comments we've gotten back about these brochures. From a small company in Weirton, the comptroller called, the people in his office cheered when they passed around that brochure.

They were complimentary about the proposed changes. They've already seen positive changes in claims management. They're very excited about the retro plans because their company instituted risk management efforts and it has not reflected in their experience modification factors.

They suggested that we not require a deposit for companies with a good Fund history and a good credit rating.

From the Bavarian Inn in Shepherdstown, the manager there wanted to have a retro, wanted to know how

they could sign up. They were excited that someone's looking out for people who don't have claims.

Small cabinet manufacturers, their premiums have gone up and they work very hard to control their losses. They want to see multiple classes. They were concerned that someone would keep the rule from going through and they felt that this one was for the little guy.

The strategy that's reflected by this rule is the back-to-basics, fundamental recognition that the financial ills of Workers' Compensation can be corrected by employers and their employees if the system provides methods for those groups to directly influence Workers' Compensation rates.

This financing plan fixes the responsibility for rates with employers and provides rewards if prevention of work-place injuries or illnesses occurs and is reflected in reduction of the number of injuries. But such a strategy to be successful requires full and complete disclosure to you of all policies, methods, procedures and cost drivers impacting your rates.

Other than the third-party administrators that are represented in the room how many people can tell me how Workers' Compensation calculates your rates? Three.

Well, we've kind of used a black-box approach for a long time, and that won't work. It doesn't allow you the knowledge to help you control what is happening to your Workers' Compensation costs.

There's no more hocus-pocus in ratemaking under this system. It is our intention to provide you with complete disclosure as we go forward.

My Risk Management Team today only intends to hit the high spots of the rule, the concepts. Let me give you a little bit of background about these people. Cheryl Ranson is a certified public accountant. She has a degree in mathematics, physics and science from WVU and a degree in accounting from the University of Charleston. She has six years of private sector accounting and management experience, along with eight years' experience as an instructor in mathematics and physics.

Amy Graves is a graduate of Purdue University with an M.S. in management and a graduate of the University of Michigan with a B.A. in economics. She has five years' experience in the life, health and property and casualty industry with CNA and MetLife, as well as three years' experience as an account analyst for Travelers Insurance Company in pricing and marketing Workers'

Compensation coverages.

Randy Suter, from our Legal Services Division is a 1978 graduate of West Virginia University College of Law. He has private experience and 16 years' experience with state agencies.

Finally, Chris DeAngelis, has a B.A. in finance and actuarial science from the University of Illinois. He has seven years' experience in property and casualty insurance, including pricing and reserving of Workers' Compensation coverage. He's worked with such companies as Allstate, Kemper and St. Paul. Chris is going to talk about ratemaking.

MR. DEANGELIS: Thank you, Ed. I'm really glad the Illini don't play the Mountaineers this year. It probably would have been a long tour but I guess I lucked out, and we probably would have lost too.

Anyway, as mentioned earlier there's many facets to the risk management rule. When talking about ratemaking we're really referring to the calculations, the formulas, the methods that are used to calculate not only each classification's base rates but also each employer's individual rate and eventually their premium.

Today I'd like to talk about four major

points that went into developing this new methodology that has really been afforded to us by the latitude through the new proposed rules.

And these four major points that I'd like to cover, the methodology is going to allow the costs that are developed by industry will be paid for by folks in that industry.

The second point is that individual employer's claims experience will be more responsive to their actual rates. The third point is that we want to have a model that more clearly communicates to you, the employer, what are the cost drivers that are really creating your Workers' Comp costs so that you know better what it actually is that is underlying those costs and how you can change that.

And finally, we wanted a methodology that allows flexibility in adapting the changes within the West Virginia Workers' Comp environment, while at the same time having the ability to support new products.

For many of you, I'm sure, if you've ever inquired as to how your rates have been calculated you probably feel like the guy here in this picture (indicating) where you're just kind of left hanging or

you're out on a limb, and we're really here to try and change that.

This illustration which is not in your handout really reflects the first objective, and that is, the industries that create the cost are going to pay the cost. If I'm a widget maker and all the claims experience for those widget makers in class acts are going to really be correlated to the premiums paid by that entire industry.

How are we going to do that? Well, basically my first point up here, and this is kind of an underlying theme throughout all the slides, is that something that started a couple years ago has really given us the foundation to implement these new systems and methodologies, and they are one, the MIRA system, which is a world class reserving data base tool that captures over 190 different variables and allows us to perform some in-depth analyses that will make the rates more reflective of what's really happening in the Workers' Comp environment.

The second system, the WCIS system, is a data base tool that allows us to store the information, to capture it and to sort it and extract it in a form that we can actually complete the analyses. So because of these two systems that have been -- the implementation started

many, many years ago, we have the ability to implement the new rate making system.

What does that mean to us? It means that we can have formulas that more clearly reflect what is happening in each individual industry and do some analyses to understand what is going on in those different industries because there's very different claims experience that happen within different types of employments.

The other thing that happens is that because of this more comprehensive data we have more formulas and more types of analyses that we can look at, so it kind of serves as a check and balance. When we create some projections, we can validate those projections and make sure that those numbers are in the ball park and that those rates really do reflect what each employer should be paying within those industries.

Two other key components going forward that will enable us to make the classification industry pay really what's happening in their industries, is the field audit which will be talked about after I'm done, which really allows us to put people in their proper classifications.

When people are not classified correctly,

the experience for that particular industry is not really reflective of what's going on, and as a result the rates may not be reflective of what's going on in that industry. By cleaning that up and also by making sure that we get the right payrolls for employers, is really going to help us make the right rates for those classifications.

And then at the same time other projects that will be going on because of this more in-depth data capabilities, it really provides us the inside as to what's happening in more detail in each of the different industries.

The second objective, and again this is an illustration, it's not really in your handout, but what we're trying to do is we're saying, okay, if I'm an employer and I have a certain claims experience, my rate is going to reflect how well I did. So what we're going to look at is what the employer actually -- the actual losses of that employer versus -- based on the actuarial models -- what we expect it to be. If that's lower, then that person's rate will go down; if that's higher than expected, then the person's rate will go up.

How can we do that? Well, again, it comes back to the fact that we have more data capability so that

we can have formulas that are more comprehensive and really are more responsive to each individual employer's claims experience.

At the same time we have the ability to break out different types of information within each industry. We can figure out and adjust how much weight do we give to each individual employer's own experience. How much do we want to limit large losses. That may vary between different industries.

We can break out losses into different categories, such as serious, non-serious and medical. All these different kinds of things are going to allow us to look at a more in-depth level at what is happening to each individual employer's loses and where they fit in relative to where they should be, and as a result credit the folks who are doing a good job and collect more from the folks who are creating more costs.

The third objective is to create a formula that communicates to you, the employer, what is it that's driving your cost. In keeping with the theme of today, we're here to try and communicate some things to you and we want to continue to communicate to you because we feel that it's so important for the employers to understand what is

driving the costs.

If that happens, we think that employers will be more responsive to trying to cut down their losses and implement better safety programs and essentially reduce the costs to the Division.

How are we going to do this? Well, what we'd like to do and what we plan on doing is breaking out the piece of pie that you pay and communicating to you what those different pieces of pie represent. Some of them you can control.

For example, claim costs, which is obviously the majority of your rate. We want to be able to put into buckets on your bill that says, okay, you're going to pay -- let's say your total bill is $10,000. Maybe $9,000 of that is because of your losses, $500 of that is because of administrative expenses which are incurred by the Division just to facilitate the process and work as an insurance company, so to speak, and also for other things such as deficit reductions to try to get the Division more fiscally in line with where they need to be.

There's other components too that may be applicable in the future. There's a couple rules that are out there right now, the QLMP discount, which is a

Qualified Loss Management Program, which really enables folks to get involved in some programs that reduce their risk and mitigate their risks and hopefully reduce their claims costs, and we're going to credit them to help subsidize those programs.

At the same time, there's a loss prevention surcharge which is on the other side, and that's when people who are not really doing a good job of safety and that kind of thing, and they're going to be hit with a surcharge to collect more from them. And the adverse risk assessment, which will be talked about later in the show.

The final objective is really to create a formula and a methodology that is more flexible and more adaptable to what is happening in the West Virginia Workers' Comp environment.

As Ed said, no more hocus-pocus. And really a key to that is that there are many parameters within this formula that are going to be determined by the folks who sit behind me right here. And they're a diversified group that represent not only employers but employees.

These folks are going to have significant input into the process, into some of these decisions which

really I think goes along the lines of full disclosure, helping you understand what it is that is involved in the process and how some of these decisions are communicated and how some of these things are calculated.

So we feel because of that we have some flexibility but in that flexibility the decisions being made are being made by people who represent you-all.

At the same time, we're looking for a formula that can serve as the foundation to supporting new products that are really tailored to better fit the needs of the employers of the state. And here to talk about some of those plans is Amy Graves.

MS. GRAVES: Thanks Chris. As Chris has talked to you about the flexibility in the current method to improve the ratemaking methodology, that theme continues throughout what I'm going to talk about, which is the alternative rating plan.

Before the rules that you have in front of you today and Senate Bill 250 and various other initiatives that are currently going on within the Division, we have not had the opportunity to provide alternative rating plans.

The plans that I'm going to talk to you

about are the deductible rating plan, two retrospective ratings plans, which are an individual retrospective and a group retrospective, and then the adverse risk plan.

All of these plans are described in the rule that has been handed out to you this morning in Sections 9 through 13. So if you want to look back through those when you go home, extra reading for you.

Just to clarify, however, that the two plans that are offered today, guarantee costs and self-insurance, will continue to be offered and become more or less the standard plans that are offered by the Division.

Before I get started, I thought about what I wanted to talk about today and I tried to think of all of you and figure out what kinds of questions you might have as this was being presented to you.

The three that I came up with are: What are these alternative rating plans and which one is best for me; and two, how can I be eligible for coverage under one of these plans; and then finally, once I'm covered under one of these plans, how do I know if I can continue to be eligible for such coverage. How will my status be reviewed. So with that, on to the first question.

What are these plans and which one is best

for me? You've already heard a little bit about the deductible plan. It's pretty much a standard plan in any insurance products, very similar to your auto insurance, your health insurance, your dental insurance. Really no difference. Basically, only difference is it's Workers' Compensation coverage and the deductibles that will be offered will typically be higher than the $50 and $250.

We would probably be offering a range of anywhere from $500 to several thousand dollars. And in return for the deductible that you choose then premiums would be reduced, the greater the deductible, the less the premium charge.

The basic advantage of this plan is that it allows for the smaller employers who may not have had an opportunity to take advantage of premium reductions through the experience modification factor to have the opportunity to select a deductible and provide them with premium reduction.

One caveat is, however, that because of the concept that an employer selecting this plan is basically self-insuring a portion of their risk, there will be some financial responsibility requirements. Depending on the size of the deductible, different levels of financial

information would be requested and reviewed prior to allowing an employer to be placed in this plan.

On to the individual retrospective plan. This plan's a little bit more complex but not too much. Basically, an employer who wants to be covered under this plan would have to meet certain premium requirements as well as certain loss experience requirements.

If an employer would decide to apply for this plan, basically what would happen is they would pay the standard guaranteed cost premium that would be charged to them based on their classification and their payroll. They would be covered also for a specified coverage period.

However, what would happen is at the end of that coverage period, if the employer had less than expected losses, the premium that they paid up front may be reduced just slightly at the end of that coverage period.

Conversely, however, if an employer had far greater than expected losses, at the end of the coverage period they may be assessed additional premium.

The primary advantage of the individual retro plan is that it allows employers that are expecting to make substantial improvements in their loss experience in a short period of time -- say for example, less than a

three-year period. So if you plan on making improvements in your loss experience within a year, you would have a greater opportunity to receive premium reductions at the end of that coverage period.

The group retro plan is really no different in terms of how premium is calculated and the concept of a settle-up period at the end of the coverage period.

However, it is going to be offered to groups of employers who fall within similar classifications. It can't just be Employer X and Employer Y. You have to be similar groups of employers who have similar classification codes.

One primary advantage of this plan is that it allows smaller employers the opportunity to group together and, therefore, have a greater impact on how their own individual premiums are calculated.

One other requirement of a group retro plan is that members of the group must be sponsored by a sponsoring organization that has been formulated primarily to assist in the reduction of claims costs and the administering of safety programs.

Finally, the adverse risk plan. As you can probably tell by the word adverse, this is not one you're

going to be running to sign up for. What the adverse risk plan has been designed to do is penalize those employers who have substandard levels of performance by way of premium surcharges.

And by substandard what I mean is employers that have failed to comply with the rules and regulations that are in front of you today in that rule. Other substandard measures might be employers that have continuously had far worse than expected loss experience.

Depending on the reasons for placement into the adverse risk plan -- and those criteria are, in fact, in the rule in front of you in Section 12 -- depending on the reasons for placement into this plan employers would be charged an additional premium percentage. That percentage would vary with the reasons for placement into the plan.

Now you may be wondering is there any benefit to employers. Obviously there's a benefit to the Division. One benefit, if you look at the pot of money that the Division must collect from all employers in the state, if you surcharge the substandard level performers, what that means for the employers that have consistently followed along and are going in the right direction, those employers because the substandard level employers are now

paying more into the pot, those employers complying would therefore pay less and then no longer be subsidizing the poor performers. Well, that's kind of an answer to the first question, what are these, which one is best for me.

You have a response sheet in front of you that we would like you to fill out. One of the questions in there asks about the types of plans that you might be interested in. We're really not trying to pigeonhole anyone into any one plan today. We understand that you haven't had enough time to really study each of these plans, but we're trying to get a feel for which ones of these plans have the most sense of urgency or the highest demand out in the marketplace. And it will give us some pointers as to which plan we want to start along and implement first off the bat.

On to the second question. Okay, I'm really interested in a deductible plan. How do I sign up. I want an application today. Tell me how to do it.

Basically what will happen as we move along with implementation and start implementing some of these alternative plans there will be applications that will be submitted to each employer.

The type of information that will be

required from employers would be such things as what are you currently doing, what is your operation, what is your financial standing. Other things might be looked at, what types of previous loss experience have you had. All of those things would be reviewed by a Division representative who would look at these things in order to make a determination as to which rating plan is best for you.

Once this application is submitted and reviewed the Division representative or underwriter would make a decision regarding the type of rating plan as well as the coverage period.

One of the things that the Division is currently considering is the possibility of offering alternative coverage periods. In other words, coverage periods perhaps less than or greater than one year.

Once the coverage period has been determined and the rating plan has been selected each employer would then receive documentation as to which plan they will be covered under for the subsequent coverage period.

Now there's also a flip side to the qualification process, and that is a mandate process. There may be, for whatever reason, depending on the

information provided on the application, a situation where the Division underwriter would determine that an employer would not be eligible for the plan that they're applying for and would, therefore, be placed in an alternative plan that has not been requested by the employer.

All mandates will be taken very seriously by the Division and would not go through without substantial review and approval. And again, the documentation of a coverage period and alternative rating plan will be submitted in the form of documentation to each employer. So that's a little bit about qualification and assignment.

On to the last question. Okay, I got approved for deductible. I've been covered for a year. Can I still be eligible for the deductible plan?

Basically what will happen would be there will be a series of reviews conducted. One such review would be a scheduled review. That typically would happen at the end of a coverage period.

What will happen is that the Division underwriter would review the activity that has happened on your policy, on your coverage. For example, have there been any significant losses throughout the period, has the

financial status changed, what types of operation is the employer doing, have they changed anything.

Based on that review, then eligibility or continuing eligibility would be determined and/or approved and then coverage would be -- documentation of coverage would be submitted to the employer.

Another type of review that might occur during the coverage period would be either based on the request by Division representative or based upon a request from the employer.

For example, let's say you're six months into your coverage period and you decide I'm going to purchase a new business or I'm going to start producing a new product line, things that might change perhaps your classification. At that time we would like for you to contact the Division, notify them of this change, and in response to that the Division underwriter or representative might determine that there might be a need for a field auditor to come out and look at your operation to determine if you're still operating within the same classification.

Another example of a review that might occur during the coverage period would be a review based on a request from a Division representative. For example,

let's say a claims representative within the Division notices that a claim has occurred on your account that really doesn't jive with perhaps the operation that we thought you were currently operating under.

At that time that claims representative might indicate that to the Division underwriter who then again might send a field auditor out to take a look at your operation and to make sure that everything is still as we understand it.

Basically any review of eligibility will be shared by both the Division representative as well as the employer. We don't want this to be a one-way street. We want it to be an interactive process and we also want to make sure that we include employers in the decision making process and make sure that everything is fully disclosed and communicated.

So that's a little bit about each of the plans, how you qualify, how you continue to qualify. And now Cheryl Ranson is going to talk to you about the field auditing procedures as well as the credit management policies and procedures that will help support these alternative plans.

MS. RANSON: What I'm going to talk to you about

today is what I consider to be a little bit of common sense that maybe we haven't thought about.

You heard Chris talk about rates, you heard Chris talk about how critical employers being in the right classification, how critical that is to ratemaking.

If you look at this first statement that you have in your handout, while we're conducting one phase of an audit we found that approximately one-third of the employers that we were studying in this pilot program were not classified correctly.

I guess what I'm here to ask you today is, do you think this is a problem? Probably those of you who are here today definitely think this is a problem. That's why you're here today.

Let's look at some of the things that could be happening out there. We've been all over this state, and as I came home yesterday evening from Elkins, I was reviewing some of my newspapers and I found that the State Tax Department had issued -- I don't know if you've read this article -- a license had been issued contemporaneously that someone in State Tax Department had listed as a gas station.

Okay. But we run across the same type of

problem. Loggers classified as truckers. Now I think you can see how that could happen. Right loggers? They drive trucks. But is that the same risk? That's what we're interested in Workers' Comp. Is that the same risk as someone who drives a furniture truck? Probably not, but they may be classified in the same classification.

Neon glass manufacturers classified as advertisers. This is one of my favorites. How could that happen? What are most of the signs made out of that you see in the store window? Neon. Right. If anybody's here in the chemical industry, do you think that neon gas is as safe as advertising? Advertisers might say yes but most people in the chemical industry would say no, it's probably a little more hazardous.

We have high risk occupations classified as clericals due to subcontracting. In the past when they subcontract, they used to subcontract clericals. Now with today's downsizing you can subcontract just about any occupation.

The last one, salesmen classified as manufacturers. We do this quite often. Businesses start out as manufacturers. Ten years later they develop their base. They don't want to manufacturer anymore, they just

want to sell, but they don't contact the Fund, so they're still paying manufacturers' rates.

Now we can take ownership for this at the Division and some employers need to take ownership for this. But what we're going to talk about today is rather than looking at the past, we're going to talk about what are we going to do about this.

We were at a hearing in Barboursville and a gentleman said, "Well, Workers' Comp is really like a big bag of jelly beans and everybody pays for that bag of jelly beans." And that's true. But what we want to make sure is that the people that are actually eating the jelly beans are the ones who are going to pay for those jelly beans. So that's what we're going to try to do. We're going to conduct some field audits.

When are we going to do these audits? Well, obviously we need to be able to assess an employer's true risk. That's the only way we're going to get to our goal of fair and equitable rates and our goal of you paying what you should be paying.

The second one, to ensure that employers are reporting payroll correctly. I would venture to guess most everyone in this room is reporting payroll correctly

and probably in the right classification. But does that mean that everyone is? Do you want to be the people in your class who are paying payroll correctly? You want everyone to report it.

Identify possible safety and loss control candidates. We are going to be doing preliminary safety surveys. There are a lot of people out there that run safe shops and there are a lot of people out there that might have some shops that might be accidents waiting to happen. And so we need to take a look at that and then we will pass that survey on to our risk managers and our safety directors.

Who are we going to audit? If you can look at that statistic, now that we have our new computer system, we're getting more data than ever before. And we found that approximately 4,500 employers represent 85 percent of our Workers' Compensation premiums.

Does anybody have any idea how many employers are in the state of West Virginia? Ed kind of gave it away in his introduction. About 40,000. So we're talking about 4,500 employers that we're going to go out and audit or about 10 percent, a little over 10 percent of the employers that make up 85 percent of our premium.

Just think if we could get that much premium in the correct classification. And then let's say that of the remaining 15 percent of the premium, two-thirds of those employers are classified correctly. So now we're up to probably about 95 percent of our premium that's correct. Just think what a big step that would be to getting our rates more fair and equitable.

We're also going to look at classes that have a history of under reporting, default or misclassification obviously. And the last thing I want to point out to you on this slide is, you'll notice that we're also going to audit people with requests from various sources, but with request from employers.

I cannot tell you how many telephone calls I get a day from employers telling me that XYZ Company down the road is operating a business and they're not paying Workers' Comp and they can't be competitive with them. So I refer them to our fraud unit and they say, "Oh, well, I don't really want to tell on them."

Okay. We can't correct what we don't know is going on out there. So I encourage you to do that because in essence if you do not do this and you know this is going on, you are partly responsible for your rates

being incorrect because you're allowing this to go on, and you will be paying for these people if they get injured.

What are we going to do with this audit? I hate to use the word audit. That has such a bad connotation. I'd like to use the word verification but I know you're going to say it's an audit anyway.

What we're going to do is, we're going to look at the premiums and see if you reported the premiums correctly, look at your payroll. Did you report the proper amount of payroll, did you report it in the right class. We're obviously going to do a classification study in our preliminary safety review.

How are we going to do this? You know, 4,500 is a lot of audits. Although it's really a small percentage of the number of employers that are out there it's still a lot for the staff that we have at Workers' Compensation. So through the RSQ process we are going to contract with CPAs and PAs to do these audits. So these are the actual individuals that will be going to the 10 percent or so of our employers.

We will have a small internal staff who will manage these audits. They will assigned the audits and they will review the audits when they come in, sort of

act as a liaison between the employer and the contractor.

When are these audits going to start? Because this is so critical to ratemaking and because as you well know rates were frozen this year so that we can work on our new ratemaking methodology and our pilot program, we're going to start these in January 1997.

And then once we get through this initial 4,500 or 10 percent or so, get our premiums in the right classification so that our rates start making more sense, then we're going to do some regularly scheduled audits.

Where is this going to happen? Obviously this has to take place at the employer's location. That's the only way we're going to be able to determine what your risk is, if we can come out and see what you're doing out there.

The next section I'm going to talk about in the rule is really Section 14 which is our receivables management section. And these are some questions that came to my mind as I've been thinking about Workers' Comp and what's going on with receivables management.

And the first one is -- and this is probably a favorite question of some of you out there -- wouldn't it be nice if Workers' Compensation could shift

premiums from those who are willing to pay to those who should pay.

Probably most of you again out there are the ones who are willing to pay and you've been doing what you should do. Now wouldn't it be nice if we could shift that burden to the people who actually should be doing the paying.

Wouldn't it be nice if we could be proactive rather than reactive with employers that we think might be potential problem employers.

I don't know, I guess there's probably a lot of people out there that might be accountants or work with a receivables management of your company. Do you treat, for receivables management purposes, your customers who are bad credit risks the same as you treat your customers who are good credit risks. If you say yes, you're probably not going to be in the business long.

No. We don't do that in private industry, and this rule's going to give us the chance to do this in Workers' Compensation. And wouldn't it be great if the Division could earn more on our investments because the more we earn on our investments then the less that we really have to collect from employers to cover the costs.

Does this rule or will this rule allow us to do these things? Section 14, we believe of this rule will allow us to do this. How?

There's two main parts to this section. First, we're going to assign each employer a tax liability rating or a credit rating, A, B or C. That's never been done before.

You could default with the Division X number of times and you were still treated the same as a gentleman that I had talked to, his company had paid for 70 years and was never late and never missed a payment. Well, that's going to change with this rule.

And the Division will determine the frequency of those premium deposits. Again, that's going to help us in managing our receivables.

Just briefly on this credit rating. Again, back to common sense. If you were looking at the credit rating of a company you would look at some things such as their financial statements and so forth. But one of the areas that I want to point out to you is this other factor that can be considered, because those are sort of the intangibles.

What type of business are you? Are you in

a declining business, are you in a business that is thriving that's ready to take off? What kinds of history has your managers or your management had with the Fund? Did you start a business and not pay your comp, shut the business down, start it up, not pay your Comp? What kind of history is that? This rule is going to allow us to shut down that loophole for employers.

One of the other things on this slide, I want to point out, I've had in my travels across the state many small employers ask me, you know, I'm a small employer but there's no way that you can give me a $100,000 credit line, but I'm a good credit risk. And that is true.

Notice this says, tax liability is not to exceed $100,000. So a small employer still could have a good credit rating. Their tax liability would not be as large as $100,000. They could be an A credit rating employer and only have a $5,000 limit. And these A and B and C credit ratings will come into play when the employers look at what types of plan that they're going to go into.

As you start reading Section 14, if it sounds a little confusing to you, go and talk to the people who are doing your payroll, talk to your CPAs, because these deposit rules were taken from the 941 deposit rules.

Somebody's laughing in the back. They must have recognized that already.

Get that circular out. You're going to find the same type of language, "safe harbor" and the whole nine yards. So talk to your payroll people.

Here's something I want to point out the Commissioner talked to you this morning about. For those who pay $500 or less for the fiscal year, you will be paying annually. Now again, in my travels around the state, I've had a lot of small employers come up to me. I had one -- where was I was -- in Wheeling that said that his Workers' Comp premium was $2.50 a quarter. And then they added whatever, the 25 or $50 to that, he had to pay every quarter.

This individual will be paying at the beginning of the year. They will not be filing a quarterly report, and then at the end of the year they will file an annual report and settle up.

Now if you think that might encompass 13,000 employers out of the 40,000 employers that might be doing this, think of the paper work that that's going to save the employers and it's going to save the Division.

The other thing I want to point out is,

notice as we get down the road for A, B and C, we want our money from the C people faster. If I think you're not going to be able to pay me, then I want my money now and that's what -- Right?

SPEAKER: Daily.

MS. RANSON: You're out of business. It's not even to the point where we're talking about necessarily bad employers. It might be a bad time in the business cycle. They might not have the cash flow to make that quarterly payment but they do have the cash flow to make a weekly payment. Of if they make that weekly payment and then the gas heater or whatever breaks down, then they'll work with the gas company to get that, but we'll still have our Workers' Comp premium, so. Notice again, lower credit rating, we want our money faster from you.

This can also present -- some of the though extreme cases, some of the employers that you've read about in the paper, about people who have run up large amounts of debts. If someone is supposed to be paying us weekly and they miss that first weekly payment, think how much quicker we can start working with that employer than if we had to wait a quarter and then another quarter before we could with them.

The next two slides, I'm not going to go over, the ones that look like this that you have. These are very similar to the flow charts that are in your IRS 941 deposit book. So you can look at those at your leisure, talk about them with your accountants.

We do offer "safe harbor." You're probably out there thinking what if I mess up and I don't deposit enough money. We do have -- as long as you deposit within, say, 98 percent of the amount, we do have a makeup period and you can pay us the remainder.

I do want to remind you that if you miss that safe harbor amount then your shortfall will be subject to interest and penalties.

The last matter, just some questions that as I was reading it and I thought, well if I were an employer what would I be asking as I was reading this section. And the first one is, okay, you're telling me I have to deposit more frequently and I have to go to the bank to make my deposit. What if the bank's closed the day that I have to make my deposit.

Okay. Well, I would say that common sense would say that your deposit would be due to the next day, but I know sometimes we don't necessarily have that common

sense in state government. So I'm here to tell you that we are going to consider your deposit timely if it is in by the close of the next banking day.

Accrued wages included in the payroll tax liability computation, no. We're talking about cash payments to your employees.

And this last one which is very timely for those of you who have been reading the paper, and you probably dealt with that, the IRS is going to electronic funds transfer. And is the Division going to move in that direction? Yes, we are, but we have to get this deposit in place and get all the bugs worked out and everything going smoothly before we do that. So we will be moving in that direction but after a phase-in period.

Now Ed Staats is going to talk to you a little bit about what you can anticipate in the future. I would like to say that I know now that you've been here for an hour or so and I know you've memorized all 61 pages of that rule and you know exactly which premium plan you want to pay, but we will have educational sessions for you coming down the road specifically geared to one, ratemaking; and two, which plan is the best for me. So those will be coming, but we don't expect you to make that

decision today.

MR. STAATS: First of all let me give you -- Cheryl mentioned the impact of a few items in the rule on employers. For example, the $500 or less provision in the rule will impact about 13,000 employers.

Another piece of information that you need to be aware of, we talked about we have 4,500 employers that account for 8,500 percent of premiums. And those employers are going to be our first audited. So if we extrapolate from the pilot audit program and the conclusions that we reach from that program, that we've already performed, we believe that that extrapolation indicates that there's $15 Million a year annually in cost shifting as a result of improper classification among that 4,500 employers. That means that those of you who are in the right classifications are making up that cost shift in your rates.

Does anybody remember the ketchup commercial from several years ago with a white background on television, a bottle of ketchup turned up side down, Heinz Ketchup, I believe, ketchup just kind of oozing out it? Carlie Simon, I'm dating myself, singing in the background "Anticipation." Well, that's what you can

expect on the implementation of this rule.

Sections 19, 1 and 2, I think it's Page 60 talks about the implementation and the phase and the period of implementation. Because even though over the past several years we've drafted changes in claims management, in financial reporting, in receivables management, we've upgraded technology, we've upgraded the skills of our people, we've redesigned processes, we followed a constant vision of the development of a better West Virginia Workers' Compensation system, those foundation pieces so necessary to implement this financing plan has still not corrected all the obstacles that we face in order to bring better value to our stakeholders.

Those obstacles still include the critical need to clean up information. For example, the field audits. A critical need to able to support a very sophisticated technology system, a critical need to change our existing complement of human skills to include risk management and insurance skills, a critical need to communicate to our stakeholders and educate our stakeholders as to the impact of their actions on this system.

We can't do this overnight. The obstacles

to successes is very, very great but we can achieve success. It has been done in other states. Washington, for instance, is an example. The state of Washington was in as bad of shape, if not worse, than the state of West Virginia, and it took them ten years.

The Fund now is so much more capable of being able to implement a sophisticated financing plan than it ever has been before with the right tools. Do you know how to speed up that ketchup, you've got to use the right tool. You take a table knife and you run it up in there and twist it (indicating).

We're putting the right tools in place to implement it. We have been putting the tools in place. And every one of our successes, and if this is successful, and it will be, will bring about its own unique set of problems.

There will be some additional mischief created in the Workers' Compensation system as a result of implementing this program. That mischief will challenge you and the Fund.

Employers, for instance, are going to be inundated with proposals from organizations developing loss control programs offering associations with plans to

include the administration of the various types of financing alternatives that you've seen.

Employers are going to have to judge these proposals on a what's-in-it-for-me basis, who will do the best job, what are the services you're going to receive, what kind of reports do you have to file, what kind of criteria do you have to maintain, what is your risk of being part of a group.

For instance, this rule has a concept in the group policies of joint and several liabilities for Workers' Compensation. What are the costs of being part of that group and how will that impact your total investment in loss control.

In addition, this rule requires the exercising of informed, skilled, judgement by Fund personnel. Failure to do so will create inequity beyond those we are trying to cure. This rule requires adherence to new policies, procedures and methods by employers and their representatives as promulgated under the authority of the Performance Council with adequate safeguards built in for review and reversal of those improper judgments or abuses. Failure to develop those safeguards is going to create additional mischief.

The successful implementation can generate significant benefits for the employers and employees of West Virginia, the most significant of which is the opportunity to share what's happening all across the country.

There are stories and examples of successes where employers and their employees working together have prevented injuries, have reduced their Workers' Compensation costs and have shared the benefits.

The Commissioner says we have about 70,000 claims a year in West Virginia. That has held relatively constant for several years.

What happens to this system if we're able as a result of the incentives built through this rule to reduce those costs by 10 percent, 20 percent, 30 percent. And those kinds of reductions are not unusual in other jurisdiction. They have occurred and we can do it. This rule encourages the development of those successes in this state.

The benefits to the state itself, for all of us, are a more financially viable West Virginia Workers' Compensation system that thereby improves the overall state's financial health. Workers' Compensation, the

deficit we face impacts the state's credit rating. The state's credit rating impacts what you pay in any personal income taxes.

This is a win/win approach for everyone except those who do not attempt to control and prevent injuries in this system. As under this rule, they will be responsible for paying the cost of ensuring their risk. This approach is not intended to allow the shifting of that risk to other employers within the state.

The most important objective of what we have attempted to accomplish so far starts with "create a frame work." That's what this rule is. We do not have all the answers in this rule. We don't know all the answers. That's why the implementation phase is going to be done very, very carefully.

We think we're headed in the right direction, we hope we're headed in the right direction. Indications from prior hearings indicates that we are headed in the right direction.

Randy is going to talk to you now about some common questions we've experienced and if you have additional questions, please ask them. Randy.

MR. SUTER: Wow, big crowd. Nice crowd, I think.

We'll find out here in a little bit. During the previous six public hearings, the Risk Management Team has heard quite a number of interesting questions and we've provided some responses that I'd like to share with you.

When we were in Parkersburg, a small employer asked, "Hey, what about the self-insurer requirement that you have at least a minimum amount of a million dollar bond in order to be self-insured. That prevents me from becoming insured. I want to be self-insured. What can I do?"

Well, number one, we don't want small employers to be self-insured. You don't want small employers to be self-insured. And if the small employer realized it, he wouldn't want to be self-insured.

I suppose you might ask why, and it's pretty obvious. One severe Workers' Compensation claim can cost hundreds of thousands of dollars. I was working on a head injury case not all that long ago where an individual had $300,000 in medicals alone.

Obviously there's going to be a whole lot of other money paid out to try to rehabilitate that individual or in benefits paid to that individual over the course of their lifetime for various treatment.

I saw another instance where a gentleman had some severe electrical burns and he ended up losing both hands over the course of time. This was quite a long time ago. There are certain rehabilitation that goes on with those types of injuries. Of course, there's statutory permanent and total disability awarded in payouts that last over the course of time.

A small employer doesn't want to be self-insured and be responsible for those debts. So let's say we allow them to do that. A severe injury occurs, what would happen with the claimant if the employer couldn't pay? Then what would he do? Probably file bankruptcy and then who would pay it? The Fund would pay it. Right, the Fund?

Well, you know, who is the Fund? They're going to a couple weeks from now, get a paycheck, are you going to take a little extra little bit out of mine? No, the Fund is. Everyone that's sitting in this room that's an employer, that's who pays. That's why we have to implement these carefully.

We don't want you to pay unless it's your risk. Well, we're spreading the risk over someone whose also paying the premium.

Some other questions specifically about certain points of -- by the way, an alternative for this particular person would have been a deductible plan where they could be responsible for a particular limit under each claim as opposed to everything, in case there was a catastrophic injury.

Why is the deductible plan a reimbursable deductible? I'll assume you haven't read all 61 pages while you've been sitting there. The reimbursable deductible means that the Fund pays the deductible to the individuals, to the claimants, for example, who may make a claim, be injured on the job.

Let's say you had a $2,000 deductible. We would still make those payments as we normally do and then the employer would reimburse the Fund.

Why is it that way? Primarily, to protect the claimant. And some employers may not want to pay. Some employers, depending on the size of their deductible may not be capable of paying, depending on how their business has gone recently. So we want to protect the claimants in this instance.

The second reason is we want to track their experience. We track the experience of self-insured

employers, we surely want to track the experience. We don't want payments directly being made by the employer that we never know about when the claims are not filed. We want to be able to track their experience.

We want to know what kind of risk employers are. They may want to know the product line at some point in time. We may have to assess their risk accordingly.

Why are there security requirements for the deductible plan? Depending on the size of your deductible obviously our requirements for security will vary. You'll want a $20,000 deductible per claim and we look at your history, you may have to forward substantial security to us.

Small deductibles, we're not going to price them now -- people as far as the amount of security that you have to post.

When will this rule be implemented? You've heard a little bit about that. I want to go over it briefly because we've heard a couple of different comments.

For the most part people seem to be saying, "Where do I sign up," and you've heard Mr. Staats talk about the ketchup coming out of the bottle sort of slowly. We've had that. We've also had a couple people get up and

say well we think you ought to delay this for a substantially longer period of time.

Number one, the legislation that's earlier talked about, Senate Bill 250, requires us to put in place a system such as this, and this is our attempt in doing so. The Performance Council has put the date of November 1st on prior to the election date. We don't want this affected by what goes on particularly in the future. November 1st was a carefully selected date. It transcends the political climate. It's too important for the employer in West Virginia.

One question that I had some difficulty with because I didn't understand it. An employer got up and said if you're going to redesign how you calculate rates, how is this going to affect my positive balance? I just didn't understand that. I had no idea what they were talking about until I realized what the gist of his comment was.

Is there any other insurance that you buy, your car insurance, for example, where you get a statement at the end of the year that says, "Here's what you paid in. Here's what we paid out." No. You've bought the cost of insurance for a year. We've been guilty, I suppose, of

miscommunicating to employers all along that there is some type of positive balance out there when in reality may have paid the cost of insurance for that period, just like with any other insurance.

We had an interesting comment in Glayde Springs regarding the group retrospective rating plan in the amount of premium, the gross amount of premium required. It's $500,000 currently. We picked that up out of another state that has this type of plan.

We're reexamining that, and I would suspect that you're going to see there's going to be some substantial reductions in that. That's been a pretty consistent comment.

We've had a couple questions with regard to what period will be used for my experience rating. As the rule is currently written there is a three-year period. However, we are going to reexamine that and look perhaps at alternative periods depending upon various classifications and their risks. They may be longer periods, they might be shorter periods, depending on the risk involved, and we're going to take a look at those accordingly.

And the question comes up, what about old claims that fall outside this experience period that we're

looking at? What's going to happen there?

Your know, normally we've given you a cash statement. We've done cash accounting here. We're going to look at what was paid out this year. We're not going to do that so much anymore.

So what's going to happen with these old claims that fall outside the experience period. Are employers going to want to fight these claims? Perhaps in many instances they won't want to fight these claims. And that might create a little mischief.

However, you should also consider the following, there's a limited universe of old claims, all be it a very big limited universe. The second question is, I'll pose the second question: In what percentage of these claims are the employers represented now? I don't know. I think that's probably some good data that we could acquire.

Third, self-insured employers will continue to fight claims because they're going to be involved with the direct payout.

And four, the Workers' Compensation Division through the offices of the Attorney General are actively litigating claims on behalf of the Fund.

If the Division believes that the system is

being manipulated with regard to the reopening of old claims as opposed to filing of new claims, the Division has a claims litigation staff that we could pursue with.

The last question that I'll cover is something with regard to the Division. What is the Division doing to reduce premium costs? There's a litany of things, and I'll hit a couple of them.

Claims are now being managed in a more efficient manner by the use of a claims teams. There used to be an assembly line process. Now teams are devoted to specific geographic areas and are looking at claims from beginning to end in the team approach. That helps a lot.

You don't have this person over here sending them on to this person who sends it on to this person, and then no one knows what has really happened to the claim over the course of time.

Workers' Comp is taking a more active role in the investigation of employers and claims. We have a larger investigative staff, we also have a prosecuting attorney on staff.

Workers' Compensation is promoting safer work places through the Qualified Loss Management Program Rule and the Loss Prevention Rules which will be out --

have been out for public comment, have been revised and we're awaiting action by the Finance Committee and the Performance Council currently.

The fourth thing which is pretty obvious, is we're developing this rule to make sure that the employers who are responsible for the cost of the system pay for the system.

Now we want to ensure through ratemaking and other measures that the employers incurring the costs pay the rates. At the same time, we'd like to reward those employers with good safety performance through multiple policy options and decreased rates.

Please note, there is a survey that you have, please fill it out. We would like to get copies of that. I chased someone down the hallway at Barboursville. I don't think they appreciated it. I won't do that here, I promise, but don't make me beg.

With regard to questions and answers, I would like to make a couple of comments here. This isn't the public comment portion of the proceeding. You're going to have the opportunity to address any -- if you want to make a statement, you'll have that opportunity. I don't want to deny you that.

This is more of a little question and answer session. Please identify yourself clearly and state who you're affiliated with. If you'll notice Ms. Vorholt up here is the court reporter and she has been recording the entire proceedings. Please, we want your name, we want your affiliation. Do me a favor, please, no six-part questions. I've had a couple of those. I'd prefer them nice, one-part question. That helps me out a lot. Do you have any questions? All right, public comments. Yes, sir.

MR. MCCLURE: My name is Joe McClure. I'm with Chemical Valley Lumbar Company, and one of the questions that I've run across is, can you have two classifications?

MR. SUTER: There are provisions in this particular rule with regard to classification. Generally the Workers' Compensation system has worked on a unified classification system where you get one classification. There are certain instances outlined in this rule where you might qualify for multiple classifications.

However, be careful what you wish for. There are some employers who have gone down the line and said, okay, we followed all your criteria. We want multiple classifications. We want our clericals over here, we want our heavier industry over here, we want them

segregated. Well, sometimes when that happens your payroll is increased through your experience and your mod factor might go up in the higher group. You might end up paying more. So be very careful for what you wish for, because that's happened from time to time. Yes, sir.

MR. ST. JOHN: My name is Fred St. John. I'm with -- Wholesales. In trying to compare the retrospective plan to the self-insurance plan is there a stop loss provision in the retrospective plan where it's really not open/ended, depending on the claims that you have for a given year?

MR. SUTER: Well, we're trying to get away from the year. We're going to go to periods because those might vary from year to year, you know, they might be different periods.

In any event there should be a range of premiums. Let's say if you look at a retrospective premium as -- here's what you're paying currently. There's a minimum premium that can be paid and a maximum premium that can be paid. Depending upon your losses and this range, if your losses are going down, for example, you would probably -- a retrospective premium plan might be good for you because then you might end up paying less premium. If your

losses go up on the other hand and you've entered into a retrospective premium plan it would go up to a maximum. Any other questions? Yes, sir.

MR. ROLLINS: My name is John Rollins. I'm a CPA here in Charleston, and I work mostly in small business. I can understand the Division's administrative need to offer some of these options to the larger employers but would it be possible for -- and I'm just using this as an example, if the Kanawha Valley car dealers went together, and of course they could afford to purchase more safety equipment or safety training -- I mean, in association, and then conversely maintain their premiums, could they as an association take advantage of some of these -- the other options that wouldn't be available to them individually?

MR. SUTER: Oh, I would think so with regard particularly to a group retrospective rating plan. They ban together, they spread their risk among themselves and you go -- in the same way I just discussed the individual retrospective premium, the group retrospective premium works the same way. There's a range of premium that's paid out. There's a minimum, a maximum and here's what we would have had normally. Other questions?

(No response.)

MR. SUTER: Thank you very much.

COMMISSIONER RICHARDSON: I want to thank each member of the staff, Ed, Cheryl, Chris, Amy, Randy. Can we give them a hand.

I know that this is now clear as mud for each of you. What we would now do is move to the public hearing portion of the program. This is an opportunity for you to provide your thoughts, you to provide your comments. As you came in to the room today hopefully you signed a sheet that looks something like this (indicating). If you didn't, we'd like for you to. In fact, by the way we have about 125 people here today, a tremendous turnout. I see Judy King from the City of Charleston here and I'm sure that people estimate the crowd for the Regatta will say there's several thousand.

I have three individuals who have marked the comment form as desiring to provide comments today, and the first person is John Hodges. Mr. Hodges, if you'll come forward, offer your name and affiliation and any public comments, we would appreciate it.

MR. HODGES: Thank you, Commissioner. I want to thank the Performance Council and staff and the Commissioner for all the hard work they've done on this

rule. I think it's a real possible thing to employers in the state.

As far as my representation, my name's John Hodges. I represent the National Federation of Independent Business in West Virginia, and our small business members, I think are very positive over this new rule.

We've already spoken at the one hearing and addressed some of the concerns we've had and some suggestions that we will make and we have written comments prepared to turn in today.

One of the concerns we had was the deductible plan, the security and bonds. We just wanted to make sure the Division makes security requirements simple and reasonable enough so that small employers could take advantage of the deductible plan.

There were two concerns that we had as far as the group retrospective rating plan. One was how the classifications will fit into the possible group rating or a group plan that we might even consider putting together at the present time. We looked through the classifications within Workers' Compensation and we see like something like 259. I think those are modified codes but the governing classes, I think represent 91 groups, which may be in our

opinion a little high as far as trying to get a group together to benefit from this program.

The other concern that we had, and we did address this at Glayde Spring, was the amount of premiums needed to provide for a plan, and that was, I think, in rule of 500,000. We felt if possible that should be reduced, and the obviously there's been some discussion over that and we certainly appreciate it.

Those, I think are the main concerns that we have. We do -- NFIB does have a program in Ohio under their program and I think we've had some experience with that, which it's been very positive. And once again, we want to thank members of the Council and the staff and the Commissioner for all their help. Thank you.

COMMISSIONER RICHARDSON: Members of the Council, questions for Mr. Hodges?

(No response.)

COMMISSIONER RICHARDSON: The only other block that is checked as desiring to comment today is next to the names of Corless and Barbara Ferguson. Are they here?

(No response.)

COMMISSIONER RICHARDSON: I will assume that Corless and Barbara Ferguson do not wish to testify then

today.

Having had an opportunity to hear the presentation today, let me open the floor for anyone to reconsider their decision that they made when they were signing in today and offer you the opportunity to provide public comment at this time.

Would anyone care in reconsideration to stand up today and make public comment regarding the proposed regulations?

(No response.)

COMMISSIONER RICHARDSON: Let me say thank you very much for being here today. I hope that this has been informative and educational for you.

Again, the time table, comments to Mr. Suter by October 8, 1996, close of business, 5 p.m. We appreciate your interest and I hope that you find these new products to be useful for you in your business. Thank you.

(Whereupon, the public hearing was concluded at 11:45 a.m.)

deal or could the results of the November election possibly change the whole ball game?

MR. SUTER: Well, this particular rule is a proposed rule. We are going through a process of eight public hearings. This is the second public hearing. We are going to assimilate all public comment and we are going to respond to that comment and hopefully this rule will be in place -- I believe it is the stated goal of the Performance Council that this rule be in place by November 1st. That takes a lot of the politics out of it.

I think that shows a very good consensus that this is a tremendous problem and something needs to be done about it and it does transcend the political arena.

Any other questions? Yes, ma'am.

MS. BROWN: My name is Cleo Brown. I am with Revco Drugstores out of Ohio.

MR. SUTER: Would you speak up, please? I am sorry.

MS. BROWN: My question is, is there going to be a maximum cap on the deductible program, or will it be based on your size?

MR. SUTER: In the course of the rule, one

thing you want to look at very closely is Section 7. Section 7 involves rate making, but it also involves a number of determinations to be made by the Performance Council.

One of those determinations would be the scale of deductibles. In other words, for example -- I am making up numbers. So please don't hold me to this -- a thousand dollar deductible, you get a two percent or a five percent or a ten percent or a fifteen percent decrease in your Workers' Compensation premiums.

So we are going to have a sliding scale that will show those various amounts, but that is under this particular rule one of those items that would need to be approved by the Performance Council under Section 7.

Yes, sir?

MR. CLARK: My name is Fred Clark. I have a couple of questions. In the section that deals with the deductible plan, it requires audited financial statements for three years; is that correct?

MR. SUTER: Cheryl, I don't believe that it requires audited financial statements. It may require audited financial statements, depending on the size of the deductible; is that --

MS. RANSON: Right. The amount or level of statements that a company would give us would be determined by what size of deductible that company would have.

MR. CLARK: As I am reading the language, it wouldn't allow the reviewed statements. It requires audited statements for three years. Most small companies don't have audited financials.

MS. RANSON: You are correct.

MR. SUTER: If that is how you read it, then perhaps you would want to make the comment at the time for the public comment that we should clarify that particular section. We are happy to make this rule better in any way that we can.

MR. STAATS: Randy, incidentally, if that is how it reads, the staff will look at that specifically and we will adjust it accordingly.

MR. CLARK: Because that would exclude most small employers.

MR. SUTER: We want to include small businesses. We have discussed the inability of small businesses to have those types of audited financial statements. However, there are many large businesses that

may want a large deductible that we would have to look at the risks to the Division in their taking care of those problems.

MR. CLARK: Okay, my second question, I didn't see on Page 17 that there is -- is there any dollar limit for excluding owner's salaries in the exposure units? There is nothing in the proposed rule that I can read and this is the first time I have seen it, but I think I read it pretty thoroughly.

MR. SUTER: There is nothing in the deductible section; however, owners may elect out the coverage, but they have to make that election under the terms of the statutory provisions under Workers' Compensation.

MR. CLARK: That is going to still be allowed under this?

MR. SUTER: Yes. However, there are some other types of information that you may -- for example, some employers, there is a maximum amount per employee that is figured in on a quarterly basis.

Some employers have taken to reporting all of their earnings in one quarter, which means that they are only charged for seven or eight thousand dollars of

their wages during that particular quarter, and this would spread -- let's say if they make $30,000 and they pay themselves $30,000 on December 25, then that would spread it out over the course of the year so they would not be manipulating the system.

MR. CLARK: My last question deals with self-insured, and I read on Page 43 Section 13, is it true that there is still a one million dollar bond security limit? I mean, this treats the Dairy Queen owner versus the small used car dealer versus the Union Carbide exactly the same, and that is the way this is in this rule?

MS. RANSON: That is correct, and self-insurance is for your larger employers.

MR. SUTER: That is a one million dollar minimum.

MR. CLARK: I understand that, but that would completely exclude a lot of even relatively financially secure small businesses.

MS. RANSON: But what the rule will allow for those businesses is large deductibles, which is similar. I think in the past you either had a regular subscriber or a self-insured. So some of the employers you were talking about had to go self-insured or nothing

at all, and now those employers will be able to go into a large deductible which will be very, very close to self-insured with that.

MR. CLARK: And on the deductible issue, when will there be some proposal to come out to the general public that shows like a $500 deductible, a $5,000 deductible and the corresponding rates that we would get on our premiums?

Is that going to be put out for public comment?

MR. SUTER: That would be put out in accordance with the provisions of Section 70 that indicate that the Performance Council will have public hearings on those type of issues.

COMMISSIONER RICHARDSON: Did you want to say something?

MR. CLARK: What kind of notice will there be?

MR. SUTER: The notice that is required is the same notice that is required for the other meetings, and that is notice in the state register. I would assume, hopefully, that there will be substantially greater notice with regard to the general public that may not subscribe

to the state register.

COMMISSIONER RICHARDSON: We will try to circulate notice on that type of an issue in the same manner that we have this time. We sent a notice to every employer, 38,000 employers in West Virginia. You may have received notice of this meeting at your place of business.

We have also circulated news releases to the press and news outlets about this trying to proactively obtain your-all's interest.

You are our customer, and it is a balancing act that we have to strike sometimes, because on the one hand we have a fiduciary obligation to ensure that we have financial resources adequate to maintain a financially sound Workers' Compensation system while at the same time we have an obligation to our customers, employers, and we have two primary customers, employers and workers.

We have to be sure that we maintain rates at a level that is competitive and the lowest possible level we can. We need your input on helping us achieve those dual goals.

Ed, did you want to say something on the surety issue?

MR. STAATS: It was an answer, yes. One of the reasons for the product design the way it is is to solve the issues that you have brought up. There was no opportunity for the medium sized business to self-insure their risk. There was no opportunity for the small business to self-insure part of their risk.

Essentially, that is what a deductible really is. It is the same thing you can do with your car insurance. The purpose of this design is to attend some of those concepts.

MR. SUTER: Perhaps one more question and then we can move on to the public comment portion. Yes, ma'am.

MS. TESTA: Sandra Testa with Harmon, Thompson, Mallory & Ice.

MR. SUTER: I am sorry. I couldn't hear you and I am fairly certain she didn't either.

MS. TESTA: Sandra Testa with Harmon, Thompson, Mallory & Ice. My question is once you are in a plan can you be moved out of that plan into another plan and how often?

MR. SUTER: I think the rule is flexible enough to allow people to come in and out of plans, but

there will be a coverage period that will be assigned. For example, it would appear to me that if you are going into a deductible for a particular coverage period, whether that is a year or a year and half, then at that point in time there is a renewal possibility or you can jump into other plans. You should probably look through there.

MS. GRAVES: There would also be in some of the plans a requirement that another application should be submitted. If you wanted to go into a different plan, that plan may require certain questions be answered with regard to that specific plan.

MS. TESTA: Along that line -- I have just glanced through -- I notice that there is an application fee. Is there an approximation on what this fee will be?

MS. GRAVES: I think it is stated in there for self-insurance. There is a fee.

MS. TESTA: The one that I noticed it under was under the deductible section. What I was concerned about, is that something low enough that a small business would be able to comply with?

MR. SUTER: Yes. I would think it would be. To me it would be anticipated that the application

fee might vary with the size of the financial review that is required.

COMMISSIONER RICHARDSON: Ed?

MR. STAATS: There is for employers -- and I say this, but this wouldn't happen in West Virginia, but just for you to be aware of, in other states where there are group type policies there is a concept called churning.

That concept basically allows the plan administrator to manipulate the group to lower the risks. We do not want that to occur here.

We will review that very carefully. That is something as an employer you need to be aware of also. In the long run it effectively sets the costs.

COMMISSIONER RICHARDSON: Ed, let me make one other comment before we open the floor for public comments. On that very issue we did have a problem in West Virginia a few years ago in the context of self-insurance and regular subscribers in the second injury claim where an employer would be in the second injury fund one day and want to move out of the second injury fund the next day and in the second injury fund the next -- not literally day after day switching back and forth, but I

think you understand what I am saying.

We do not want a revolving door. This is a contract. This is an insurance policy. You commit to a particular type of coverage for a certain amount of time. We commit to insure that in that manner for that given amount of time.

If you were to elect a retrospective rating program for a year and get six months into the year and see that you had underestimated your costs and you don't like it, we can't change that policy in the middle of that policy.

That is not fair to us as the insurance carrier, the Workers' Compensation Fund. It is not fair to the other employers who have similarly elected to take that type of risk management approach.

So keep in mind that we can't be -- it is not fair for any of us to have a moving target and shift or churn or use a revolving door as we have described. It is very important that we respect that.

Okay, were there any other questions before we move to the next phase? Let me once again publicly express my pride and appreciation for the presentation that Ed, Chris, Amy, Cheryl, and Randy have

made here today.

I hope that a very, very complex issue has been made more understandable for each of you with this presentation, and let me reemphasize too, if anyone did not get either a copy of the handout consistent with the slides, I think we still have some available, and also, if you did not get a copy of the regulations we still have some available and the staff doesn't know it yet, but they are about to find out that they will be available to give it to you today at the end of the presentation.

Looking over the list we have almost 70 people registered today and I have question marks next to the -- no one has indicated that they want to speak. I have a question mark by the name of Karen Caltrider. She has left, okay. Then she evidently doesn't want to speak.

Kenneth Downie, interest in speaking? Question marks by those two names. Now anyone who after having experienced this presentation today would now like an opportunity to step up to the podium and say a few words about the proposals? Yes, ma'am. Come forward, grab a mike and state your name, your affiliation, and have at it. Here, you want this one?

MS. BROWN: My name is Cleo Brown as I

said before, and I am with Revco Drugstores, which is a company based out of Twinsburg, Ohio.

My responsibility is administering Workers' Compensation for 14 states. In West Virginia we are part of the Fund obviously. In Ohio we are self-insured. In the remainder of the states we have a deductible program.

I just wanted to make a comment on the deductible program because we have been through the retrospective training programs. We have been through a number of self-insureds in the remaining states.

We have come to the conclusion that the deductible program has been the best financially for us. You can control your costs and you can choose your own -- how much you want to assume responsibility when you don't have the administration self-insured program.

The only caution I have is that I am hoping that we will have an ability to audit and look at the way our claims are being administered by the Funds so that we can have an input into how our money is being spent. Thank you.

COMMISSIONER RICHARDSON: One of the risks of public speaking of this nature is that I always give

the Council an opportunity to ask the person questions. Do any members of the Council want to ask Ms. Brown anything?

Would anyone else like to make any remarks today regarding the proposal, the concept, more specifically the proposed regulations?

If not, members of the Performance Council, would any of you care to say a few words? Mr. Epps always wishes to say something.

COMMISSIONER EPPS: Always. I have nothing new, but I would like to reiterate what the Commissioner said and I think Ed said the same thing. For those of you -- just so everybody understands the process, this is one of eight public hearings. In addition to that Council will get written comments by October 8th. We will take all of the comments that we receive at the public hearing plus the written comments.

The staff will do a Herculean job in trying to react to all of those comments.

The result of that will not only be some revisions to the rule that you see before you. We have two committees on the Performance Council. The Finance Committee is responsible for taking a look at the final

- - -

certified public accounting firms to provide these audits for us, the 4,500 audits that she was talking about, and we also have some plans for management structures for quality control over those audits.

MS. RANSON: Let me speak to that for just a second, if I might. I'm the one whispering in the background. We have six, and out of fairness, they are not classified as auditors, they are classified as investigators, and they are not at the skill level that we are talking about for this particular program, and that's not meant as a criticism of them.

They have a job to do and a role to play, but we are talking about a considerably higher skill activity on payroll analysis, on premium obligation analysis, on the safety presence in the workplace, on the appropriate risk classifications.

So the short answer is six; the long answer is really in the context of what we have in mind, none.

MR. SUTER: Any other questions? You realize, of course, as this audit process goes on if we can find moneys available that people aren't paying, that means that you pay less.

- - -

I mean, it is a big pot of money, the more we can get out of the people that absolutely should be paying, the less you have to pay. Any other questions? Yes, ma'am.

MEMBER OF THE AUDIENCE: I have a question about the groups that you are talking about. How small of a group and how large of a group do they have to be?

MR. SUTER: Okay. In the group retrospective rating plan there is a couple of requirements, I believe there needs to be more than two at least to form the group, and there are some minimum premium requirements. It is a high minimum premium requirement for the group; however, we have had some comment on that, I believe it's a half million dollars for premium requirements.

We have had significant comment with regard to that, frankly we took that number from a paper that stated a lot more industry than we did, and we are going to take a look at that number, and I will assume that our recommendation will be to reduce it substantially for the amount -- a retrospective rate of premium plan is a time intensive effort, and it's

- - -

more time intensive with groups because you have to figure out what the premium is going to be at the end of the period.

Any other questions? Yes, ma'am.

MS. LANGA: Kim Langa, a vocational consultant. In determining the risks of an industry for the business, what do you have planned for devising the job analyses in determining the risk factors of a particular business or organization?

MR. SUTER: Okay. The risk factors involving a particular industry should be directly related to the costs that have come out of that industry, at least from an insurance prospective. Amy.

MS. GRAVES: You are talking about the jobs that people are doing within an organization, how can we set the level of risk of their responsibilities?

MS. LANGA: What analysis do you plan on doing? What kind of a job analysis format do you have in order to assess the risk factors seated with each business and each industry?

MS. GRAVES: There are a couple of things. One at a very technical level such as maybe an ergonomic study, a loss analysis. That would be the

- - -

role of a loss management service provider; that would be one of the roles that that provider would perform. That's something that is going to be performed by an outside vendor as part of the qualified loss management program.

The other assessment that would be performed upon receiving a survey from a loss management service provider, a Division underwriter might review that information, look at some classification guidelines based on specific underwriting guidelines to determine the risks associated with that particular industry group and then make a determination based on that information. Does that answer your question?

MR. SUTER: I would note that there are two other rules that we have had public hearing on, I see some familiar faces, I saw this gentleman there; we had some hearings last winter and they have not been enacted yet, however, we are very close to that point.

One is called the qualified loss management program, which as Amy was talking about provides through an RFQ process we can select vendors to supply this service to employers and basically underwrite the

- - -

cost of that by giving them a premium credit. So that's something else that you may want to look into and find out about.

There's another rule that goes along with that with regard to safety and loss called loss prevention rule, which is a mandatory program for certain employers who have significantly poor experience.

Any other questions? Yes, sir.

MR. NORMAN: Rick Norman, West Virginia Hospital Association. You said that associations will be flooded with requests from TPA and risk managers for the program and their association for their members.

Will there be any type of improvements for certification by the workers' comp people that this TPA is equitable and they have done jobs other places or would that be left up to the responsibility of the associations?

The second part of that is if we were to choose someone and they didn't do the right job and you send your auditors in, then what? Would there be additional costs incurred to the association to that

- - -

group for not having the proper documents?

MR. SUTER: That was a lengthy question.

MR. RICHARDSON: Randy, let me take a stab at this one.

MR. SUTER: Okay.

MR. RICHARDSON: I guess, first of all, the qualified loss management program and the loss prevention rules on safety management and safety consultative services and matters of that sort will require a credentialing process. Okay.

Now, beyond that, in the context of what is known in the industry as third-party administrators, TPA's, if you will, West Virginia does not have any type of requirement regulating that type of business. We do not have a wide number of them, but there are several, I would guess maybe a dozen total that do business in West Virginia.

That's certainly not on the level of our friends across the Ohio River or 20 miles east who have far larger employer bases and have many, many TPA's. So at this juncture I would not expect any particular kind of credentialing or regulatory environment as it relates to third-party

- - -

administrators, and we would probably leave that up to individual organizations and employers.

Let me make one other observation, however. If more firms come into that particular market, given what we are talking about here today, intuitively I think it will probably be folks from the insurance industry, it will be folks that already are dealing with this type of concept; not this particular type of concept, but different types of insurance policies, if you will, in other environments.

MR. SUTER: Any further questions? I guess I will turn it back over.

MR. RICHARDSON: Thank you. I want to thank each of the individuals; Ed, Chris, Amy, Cheryl, and Randy for their presentations. Did you find it informative?

I hope you realize that the type of changes that we are pursuing to fix West Virginia's workers' compensation system are being guided and developed by these folks and these types of folks. It is a different experience I think than people who interacted with the system experienced ten years ago.

With that we have completed the presentation

- - -

portion of the public hearing, and now we are about to begin the public comment period. I have one problem, no one has indicated a desire to provide public comment.

So this might be the briefest public comment period that we have had, gang, in any of these public hearings. I will make an offer at this juncture for anyone here today who may have indicated that they did not care to speak or who may have indicated that they were not -- may not have indicated yes or no, please, you are welcome to come forward at this time and provide any thoughts, observations, or public comments.

Would anyone care to offer -- Doug, come forward to the microphone and state your name and rank and serial number. State your name and your firm, please.

MR. MERRITT: My name is Doug Merritt, I'm with Wheeling-Pittsburgh Steel Corporation, and I just have just a brief comment. We are self-insured in three states; Ohio, West Virginia, and Pennsylvania where the bulk of our employees are located.

One thing we are concerned about is of these

- - -

three states our highest cost is in the State of Pennsylvania, and that's the only state that includes insurance companies providing coverage. We hope that that's not the direction that we are going to have insurance companies provide coverage in the State of West Virginia.

Second comment, I just haven't had a chance to digest all these rules, but one of them that concerns me is Rule 6.14, assignment. I'd just like to read it, because I'm sure a lot of you here haven't had a chance to read these rules either. It says, the Division has the authority to assign at any time any employer to any workers' compensation insurance plan offered under the provisions of this rule. That concerns me.

If employers are the stakeholders, the major stakeholders in this workers' compensation arena, the employer should have the opportunity to select their option of insurance, not being mandated in this. That's all I have.

MR. RICHARDSON: Members of the council, do you have any questions for Doug? Doug, we really appreciate your observations, and hope that you will

- - -

also thoroughly review the rules and provide your thoughts and observations to us in writing to the address provided.

I want to clarify one thing he was mentioning on assignment, that in the context of the assigned risk pool, the adverse risk; what is contemplated under the rule is that an employer could be analyzed by the Division's staff and placed into the adverse risk category, just like happens in general insurance.

On the other hand, on the issue of one of the other options, the retro plans or the deductibles, it would be a joint decision that where, you know, your risk would be analyzed, you would make that decision, and you would be granted the ability to go into that program. So it's not -- other than the adverse risk program, it is not contemplated that you will be forced into doing this or doing that.

Any other public comments today? This is something that you welcome, you dread; do you have a sense of it? Is it just too early in the morning for a whole lot of energy over workers' compensation? Any members of the Performance Council care to provide public comment at this time before we wrap up?

- - -

All right. Let me reiterate what happens. This is the fifth of eight public hearings throughout the State of West Virginia. These regulations went forward for comment beginning August 8, so the period for comment closes October 8.

Once, again, let me direct your attention, the last day for written comments is October 8, 1996 at 5:00 p.m. To submit those written comments address your comments to Randall B. Suter -- you met him earlier -- Legal Services Division, Post Office Box 3922, Charleston 25339-3922. If you have a question for Randy you may call him at the number listed.

Now, here is what happens. Those comments come in by the close of business October 8. The finance committee of the compensation program's Performance Council, which includes Mr. Epps as the chair, Mr. Thompson as a member, Mr. Humphreys as a member, and one other gentleman who was not able to be with us today, Mr. Bailey, who represents the coal company employers; they make up the finance committee.

They will sit down and pour over these comments. They will look through them collectively

- - -

with the risk management team, and they will work to respond to each individual comment for publication within the State register. We hope to adopt this rule by November 1.

Will the world change November 2? No. What will happen is the rules if you look closely are written in a manner that with appropriate notice we can phase in different provisions of this regulation so that everything doesn't, you know, magic wand wave and change overnight. Now, oh, my gosh, is this the last I'm going to hear about this until I get some notice in the mail? No, what we hope to do as we proceed to implement this is to involve you even more.

As we step forward to begin putting folks into an adverse risk pool or offering a deductible program or whatever the issue might be, we anticipate coming back to Wheeling and other communities around West Virginia, once, again, doing a mailing to every employer in the State and going through a more detailed description of each individual activity as we implement it. So that is the process that we anticipate.

- - -

The world will not change overnight. If you hope it will, I hope I didn't disappoint you too much. If you dread the change, then take some solace in the fact that it will be phased and disciplined, but in the long run I can tell you as a person that's worked with this program for the past seven-and-a-half years or so, and worked around this program for over a decade, that this is going to provide a substantial improvement for injured workers and employers in West Virginia in the way that workers' compensation is priced and the incentives that that pricing provides.

I want to thank each and every one of you for coming out this morning. This is a terrific crowd. It's been our pleasure and our honor to be with you. We hope you will comment, we hope you will provide us feedback. We hope you will complete the form. We hope you will complete the form that starts off please respond.

No, we don't want you to send this to Randy as a part of your comment, we want this, today and we are not going to let you leave until you give it to us. Thank you all very much for being here, and we will be available to talk after the meeting.

- - -

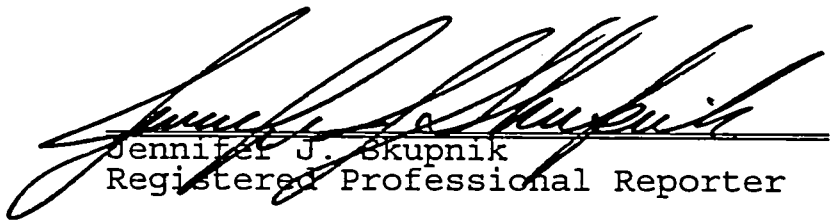
(Whereupon, the proceedings were concluded at 10:42 a.m.)

- - -

C E R T I F I C A T E

- - -

I hereby certify that the proceedings and evidence are contained fully and accurately in the stenographic notes taken by me on the hearing of the within cause, and that this is a correct transcript of the same.



Jennifer J. Skupnik
Registered Professional Reporter

WEST VIRGINIA WORKERS' COMPENSATION DIVISION
BUREAU OF EMPLOYMENT PROGRAMS

IN RE: Public Hearing on Risk Management Rules

TRANSCRIPT OF PROCEEDINGS had and/or testimony adduced in the hearing held before the West Virginia Workers' Compensation Division and the Compensation Performance Council at the Holiday Inn, Parkersburg, Wood County, West Virginia, on the 9th day of September, 1996, commencing at 11:12 a.m.

BEFORE: COMMISSIONER ANDREW RICHARDSON

FRED TUCKER
RICHARD HUMPHREYS
EVERETTE SULLIVAN
THAD EPPS
CHRIS JARRETT

APPEARANCES: RANDY SUTER, Legal Services
ED STAATS, CFO
CHRIS DEANGELIS, Risk Management Team
AMY GRAVES, Risk Management Team
CHERYL RANSON, Risk Management Team

DONNA MILLER-MAIRS, Certified Court Reporter
7724 Sissonville Drive
Sissonville, West Virginia 25320
(304) 988-9581

P R O C E E D I N G S

(11:12 AM)

COMMISSIONER RICHARDSON: I want to thank all of you for attending today. This is overwhelming. I hope this is an indication of the interest in the changes that we have underway, the changes we have planned with regard to the rate making and underwriting system within Workers' Compensation.

My name is Andy Richardson. I am Commissioner of the West Virginia Bureau of Employment Programs, and in that capacity I serve as the chair of the Compensation Programs Performance Council, which is a nine member board made up of four members representing the interests of workers and organized labor, four members representing the interests of business, and myself as sort of the man in the middle.

The Compensation Programs Performance Council is essentially the governing body relating to the Workers' Compensation system.

Here today for consideration are proposed changes in the rate making system of our Workers' Compensation insurance in West Virginia.

West Virginia has made substantial changes

and progress in Workers' Comp over the past few years. This particular program comes from amendments to the Workers' Compensation law in 1995.

Under the changes in that law the Legislature recognized inadequacies in our Workers' Compensation system's rate making system and charged us with revamping that structure and taking a fresh look at how rates are determined for individual employers.

The Compensation Programs Performance Council in conjunction with the staff of the Workers' Compensation Division have worked over the last several months analyzing possibilities and developing the regulations that will be before you today.

I would like to introduce at this time the members of the Compensation Programs Performance Council that are in attendance today.

At your far left representing the Coal Miners of West Virginia, Fred Tucker. Next to Fred representing the interests generally of workers throughout our state is Richard Humphreys with West Virginia University's Institute for labor studies. I believe actually you are now retired, aren't you?

MR. HUMPHREYS: Yes.

COMMISSIONER RICHARDSON: Everette Sullivan represents the interests of the building trades in West Virginia. Over to your far right is Chris Jarrett with West Virginia Water, West Virginia-American Water, who is the designee on the Compensation Programs Performance Council on the Chamber of Commerce, and next to him and myself is Thad Epps, who represents the perspectives of manufacturers.

We have a diverse group of individuals that are here today. A few brief comments before I turn this over to our staff. I want to recognize that staff. As the Workers' Comp Division's chief financial officer, Ed is a hometown boy. He lives in Parkersburg. He jokingly told me today that if his friends and family were not in the room we would have plenty of room today. So it is great to have that kind of support and Ed has done an exceptional job in developing the plan that we want to share with you.

Randy Suter from our legal staff is here with us and also in the audience is Judith Greenwood from our research division. I think that is all of our staff; is that right? Oh, no, I have got Cheryl. I am sorry. Cheryl will be making a presentation here in just a few

minutes as a part of the work that our staff and our consultants have been working on.

Now quickly, what is this about today? This is about a better system for West Virginia's employers to more effectively reward fewer accidents and low accident costs and to more effectively make those who cause the costs in the system pay for the costs of the system, okay?

I think it goes without say that the West Virginia Workers' Compensation system over the years has not done an adequate job of reflecting experienced work employers.

For example, those employers who have had fewer accidents sometimes nevertheless pay a pretty high rate. In contrast, employers that have caused many more accidents may not be paying really their fair share.

Now there are basically two ways to insure Workers' Comp and I use the term insure because it is an insurance program. There are basically two ways to insure Workers' Compensation in West Virginia.

One is through individual self-insurance where an employer is of sufficient size and financial capability and has a sophisticated enough safety

initiative underway to pay the claims themselves, so to speak.

The second is to subscribe to the Workers' Compensation Program and our fund pay the first dollar of coverage.

You will see today a variety of different new ways that will be added to those two basic concepts. One will be an assigned risk pool. What we do is take the particularly bad risks within the Workers' Compensation Program and segregate them over in an assigned risk pool so that their bad experience and bad costs don't trickle into impacting the costs for all the other employers.

A second concept will be what is called retrospective rating, and without getting into any detail on that, basically pay an amount up front and then settle up at the end of the year, either getting a rebate if your projected costs or your costs were lower than what was projected, or you would have to pay a little bit extra if your costs were higher than projected.

A third area will be the concept of deductibles. I think all of us have some type of a deductible, for example, with our health insurance plans or our automobile insurance.

Obviously, the lower -- if I have a one hundred dollar deductible on my meager little car, I am paying a higher premium than Mr. Epps would be paying with a five or six hundred dollar deductible on his Mercedez.

The point being that if you bear a portion of the cost up front, it lowers the premium that you pay into the system, and that insurance principle would certainly work in the contest of Workers' Compensation just as it does with our own automobile insurance.

Rate making and underwriting do not stand alone. There are really four elements to this effort. There is field auditing to verify payroll and ensure that employers are classified correctly.

There is safety accident prevention, loss prevention designed to keep accidents from happening in the first place. There is the underwriting and the rate making, and then there is the collections and accounts receivable to make sure that those who owe the money in fact pay the money.

All of these areas are critical to the business plan of Workers' Compensation, to the turnaround effort that we have underway, to ensuring that this program is financially sound for the benefit of West

Virginia's employers and injured workers.

Now a word of caution. What we are talking is a radical departure from the way West Virginia Workers' Compensation has traditionally been in business.

We do not currently have on staff -- we have a number of very capable professionals on staff and very dedicated employees, but we do not have the skill levels and the human resources available to accomplish this task.

To make this happen, it will involve recruiting and attracting new people with different skills to the Workers' Compensation Program.

I offer that as a cautionary note, and I know that Ed is going to talk about that a little bit too, because we recognize that it is a major undertaking, a major departure from the way we have done business, a project that will be the next eighteen months to two years getting forward in full implementation, but we are very, very pleased that you have come here today to the Holiday Inn to learn about this undertaking.

It is exciting. It is perhaps the most vital change that we have initiated in the Workers' Compensation system in the past several years.

With those opening remarks, I am very grateful for your attendance today. What we will do is we will have a presentation by the staff; we will have an opportunity for questions and answers; and we will then offer -- I think in signing in you were asked to check whether you wanted to make public comments or did you not want to make public comments.

Those who are here to make public comments will then be given the opportunity to speak. In fact, if you did not check that you wanted to make public comments, you will be given the opportunity to speak.

I would remind you that this is the second of eight public hearings, and we will then go back to review all the comments that we have received.

You will note on the regulations that the date for comments closes, I believe, it is October 8th. Is that right?

MR. SUTER: Correct.

COMMISSIONER RICHARDSON: There is also a designated name, Randy Suter, and his address at the bottom of the Regulations where you may send your comments.

Do any of the Council members have any

comments they would like to make before we begin the presentation? Okay.

Ed Staats will now begin the presentation. Thank you.

MR. STAATS: Thank you-all for coming. We are elated at the interest. I didn't know that this many people were going to show up at a Dare To Be Great seminar, and if you are not here for Dare To Be Great, you probably ought to leave, and the rest of my family can now leave, about half of that side of the room.

I see faces that I haven't seen for a long time, and while I am at it, Gene Tenant and several people in this room who have had an interest from the small business standpoint, from a medium size business standpoint in the West Virginia Workers' Compensation system.

What we are going to talk about today is a financing plan for that system in the future. That financing plan is known as Series 9 Risk Management. It represents another milestone along the road that we have chosen to improve the Workers' Compensation system. The direction we have established has generated significant interest throughout this state.

Let me just share with you some of the telephone calls. Let me also just point out that your very presence here shows that interest.

We began the mailing when we sent this brochure and this about 61 page rule. We began to get comments and telephone calls from people around the country -- or around the state.

Weirco Moving and Storage, a small company, the controller up there called and said the people in his office cheered when they passed around this brochure. They were very complimentary about the proposed changes and they had already seen the positive changes in our claims management effort.

They were excited about the retro because their company had already implemented risk management programs and the impact of those risk management programs did not reflect itself in the rate structure.

They suggested that we not require a deposit for companies with good fund history and a good credit rating.

The Bavarian Inn in Shepherdstown called. They wanted to have a retro and wanted to know how to sign up. There were very excited that someone was

looking out for people who don't have claims.

The manager there, even though it is her day off, is going to be at the Martinsburg hearing.

A small cabinet maker said their premiums went up and they have been working hard to control their losses. They want to see multiple classes. They were concerned that someone keep this rule from going through and they felt that this one is for the little guy.

Based on these comments and others, we think we are going in the right direction, and Exhibit 2 and 3 of your presentation reflect the objectives that we are trying to meet, but the objective it most reflects, the underlying strategy of this financing plan is the one on Exhibit 3 that begins "Create a framework."

The strategy is a back to back fundamental recognition that the financial ills of Workers' Compensation can be corrected by employers and their employees if the system provides methods for those groups to directly influence Workers' Compensation rates.

This financing plan that we are going to talk about fixes the responsibility for rates with the employer and provides rewards if the prevention of work place injuries and illnesses occurs and is reflected in

the reduction of injuries.

Such a strategy to be successful requires full and complete disclosure to you of all the policies, methods, procedures, and cost drivers that impact your rates.

How many people in this room know how Workers' Compensation calculates rates? Three, four? Sixty people in this room. If you don't know how we calculate rates, you can't influence those rates, and that is part of what this program is all about. No more hocus-pocus in the rate making system.

It is our intention to provide you full disclosure as we move forward in this project. We encourage you to review this rule in detail and provide comments.

The detailed presentation of this rule, if you will look at it, by its sheer size is almost impossible in this forum. However, we are going to talk about it. There will be educational sessions coming up.

My risk management team in our presentation only intends to hit the high spots of the concepts that are included in those proposed rule.

Let me introduce the members of that risk management team. Over here is Cheryl Ranson. Cheryl is a

Certified Public Accountant. She has a degree in mathematics, business, and science from WVU, a degree in accounting from the University of Charleston. She has six years of private sector accounting and management experience, along with eight years as an instructor in mathematics and physics.

Amy Graves is a graduate of Perdue University with an M.S. in management and a graduate of the University of Michigan with a B.A. in economics. She has five years experience in life, health, property and casualty industry with CNA and Met Life, as well as three years as an account analysis with Travelers Insurance Company in underwriting, pricing, and marketing Workers' Compensation coverage.

Randy Suter from our Legal Services Division is a '78 graduate of the WVU College of Law. He has experience in private practice, as well as 16 year experience with state agencies.

Finally Chris DeAngelis. Chris has a B.A. in finance and actuarial science from the University of Illinois. He has seven years experience in property and casualty insurance, including pricing and reserving of Workers' Compensation coverage.

He has worked with such companies as All State and Kemper and St. Paul and is pursuing his actuarial designation. Chris is going to discuss the rate making section a little more.

MR. DEANGELIS: Thank you, Ed. As Ed said, I am here to talk about rate making, and when I refer to rate making I am really talking bout the formulas, the perimeters, the assumptions, all those ingredients that go into calculating not only the base rates for each classification but you as an individual employer, how your rates are calculated.

I see some of you as indicated by the hands that were raised here when we talk about rate making feel like this guy in the picture because you are just kind of left there hanging and not sure how you got there and not sure what is going on. Well, that is definitely what we are here to try and correct.

The whole point of this meeting is the proposed rule. It is that rule that has given us the latitude to design the new rate making approach to really allow us to come up with some of the concepts that we are proposing here.

As Ed had mentioned, we are going to give

a high level viewpoint, because really in order to go through a lot of the concepts here -- and there is a lot of technical and a lot of in depth analysis here. To really go through all of that would take way too much time and we really don't have that ability right now, but we will have educational sessions coming up within the next six months as we go forward and complete implementation, and as those meetings are scheduled we will certainly let you know so that you can attend those as well.

What I am going to cover today is really the four main objectives that we approached in the design of the new system, and those objectives really are having a system where the industry costs really drive the classification base rates.

Secondly, we wanted to have the calculation for each individual employer really be reflective of their own experience. If they have good experience then their rates will come down. If they have bad experience they will go up.

Our third objective was to have a model that more clearly illustrates how the rates are calculated, what is driving the costs, so that you the employer have an idea of what is it that is influencing my

rates and what can I do about it to try and bring those down.

Finally, we are thinking about trying to put together a model that has the flexibility to adapt to changes within the West Virginia Workers' Comp environment as well as support new products and new alternative rating plans which will be talked about later in the session.

Our first objective is really pretty basic. The people who create the costs pay for the costs. So if I am in the widget industry, all the people that make widgets, their total cost -- the premium that we want to get from the widget makers is going to be equal to the costs that they produce.

What that boils down to is how do we make a fair allegation of the costs to the base rates.

As I said, the rule is really what is giving us the latitude to design these changes, but it is really some things that happened that have been going on for several years within the Division that have allowed us to design the system that we have.

That is the implementation of two administration systems over at the Division. These systems give us the capability to collect and analyze the

amount of data necessary to really have a comprehensive rate making insurance methodology, and without that, we really couldn't do a lot of the things that we are trying to do here.

How can we do it? Well, we fell that the formulas are really a lot more closely related to allocating the costs to where they are coming from.

Because of this enhanced data capability we can now look at some things that we couldn't in the past, while at the same time it allows us to have several more formulas to look at so that we can see things from different perspectives and validate some of the projections that we have come up with.

I think because of that it allows us to add checks and balances in the system and really distribute the rates a lot more fairly.

Two other chief components that are going to allow us to distribute costs a little bit more fairly on the base rate level is field auditing, and Cheryl will be talking about that, but essentially the field audit is critical in making sure that employers are correctly classified, because it is the classification information that drives those rates, and if we have people that are

really put in the wrong industries, their experience is not really reflective of what that classification is, and as a result can skew what those rates are.

So we are going to try and clean that up as well as other special projects that we are going to look at in major industries in trying to see what is actually happening and then adjust the base rates from there.

Our second objective is to really reflect an employer's experience in their own rate. So if the base rate, for example, for the widget makers is $10 and we have Widget Makers, Inc. and they have better loss experience than average, their rate is going to come down and they are going to pay less.

The reason we are able to do this is again because of our more comprehensive data capabilities. It really allows us to look at things more in depth and it allows us to adjust if a base rate is too high for a particular classification, or if it is too low, it allows us to shift the person's experience up and change the base rate accordingly for their own individual experience rate.

At the same time it allows us to have some flexibility because each industry is different. If you

were to take say, maybe the major industries, if you were to say industrial and manufacturing and construction and whatever, there is different kinds of experience that actually happens within each of those industries and the model allows some flexibility in terms of determining whatever perimeters that go into that model.

Certain things that could possibly change are the number of years of claims experience used; how much weight can we give an employer's own experience; how much do we want to limit large losses; as well as we now have the ability to break out losses into different types of categories, your serious losses, your non-serious, and your medical.

So all of these things are going to really allow us to get a much better handle on what is creating the costs and how do we want to allocate those costs to the people and the employers who are covering those costs and actually paying for them.

Our third objective is to have a model that more clearly communicates what is it that is driving the costs and what is it that is really the root cause of why my rate is going up or why my rate is going down, and we feel that we can communicate how they are calculated

and how you can impact your own and influence your own rate.

You are going to realize that if you can reduce the claim costs portion of the pie then your rates are going to go down.

There are going to be other things that you may have a lot less control over. There are certain expenses associated with administering the Workers' Comp Claim Division, and there are some reduction initiatives that are necessary to make the Division more equal here.

So as a result we are going to list out the different pieces of the pie so that when you get your bill you are going to be able to take a look at it and say, "Okay, well, my bill is $10,000 and I know that $8,500 was due to losses and $600 was due because I have to pay the administration fees, and maybe $900 is a deficit reduction. These numbers I just made up, but I am trying to illustrate a point.

Instead of just getting a bill that says that you owe X, we are going to try to start to detail where are those costs coming from and what is driving those costs.

Finally, the last objective is to create a

model and a methodology that allows for flexibility. The environments are changing and things happen within the different industries, and we need to have the ability to really reflect some of those changes.

I know in the past you probably felt, as Ed has mentioned, hocus-pocus for developing rates. We want to be more clear on that and for the first time we are going to have perimeters that are going to be decided by the Performance Council.

As Commissioner Richardson introduced them, they are representatives of the industries, of the employers, of the employees, and these are the folks that are going to be making those decisions.

So we really feel good about the fact that things are going to be more open and you are going to be more in tune with what is going on.

Finally, the flexibility also allows us and serves as the foundation to be able to implement new alternative rating plans. These plans are really tailored to be more reflective of an individual employer.

Maybe some programs are more suited for you, and if you are somebody that doesn't have a lot of claims, maybe you want a deductible because your rate is

going to go down, but yet you are not going to have to pay a lot of deductibles because you don't have a lot of claims.

Without the new rate making system, we would be unable to support these products, but I am not going to get into too much detail because Amy is going to come up now and talk to you about the actual rating plans.

MS. GRAVES: As Chris mentioned, the rate making methodology really provides the basis for us being able to administer and distribute alternative rate plans to the employer.

Many of you have received the pamphlet that talks about each of the various alternative rating plans that the Division is planning on offering in the very near future.

These plans are also referenced in the rule that you have with you that has been handed out to you in Sections 9 through 13.

Today I just want to talk to you a little bit more about what some of the alternative rating plans are all about and specifically answer three remaining questions that you may be having.

One, what are these rating plans and which

is best for me? Two, how do I elect to be covered under one of these plans or will I actually be told which plan that I need to be covered under? Three, once I am covered under a certain rating plan, how will my eligibility be reviewed and monitored by the Division?

Just to kind of set the record straight, guaranteed cost, which is known as the regular fund and self-insurance will continue to be the standard coverages that are in the Division. What I am talking about today are ways of financing those coverages; namely, alternative rating plans. Those are, as Commissioner Richardson said in his introduction, deductible, individual retrospective, group retrospective, and adverse risk plans.

I am going to talk first about the deductible plan. As most of you are probably aware, a deductible plan is something that is offered or in exchange for choosing a deductible amount, which means you will pay claims up to that certain deductible amount.

In return for that agreement, you receive various reductions in premiums, very much like your personal automobile policy.

The only difference here is the

deductibles on the Workers' Compensation will typically be more than just a hundred dollars or two hundred dollars. They could range well into the thousands of dollars or two thousand or what have you.

Basically, you are in exchange for self-insuring a piece of your claim -- you are receiving a premium reduction.

If you as an employer are able to maintain that financial responsibility, then a deductible plan would be something that you would want to look into.

An individual retro plan is a little bit more complex, although not too much more. This would be offered to employers based on not only premium size, but also on loss experience.

Basically what would happen is if you were to elect to be covered under an individual retro plan after submitting an application, you would be approved under this plan and would pay a standard premium amount.

At the end of your coverage period, that premium would either be rebated based on the fact that you had losses that were less than expected and you might just get a premium rebate. If, however, your losses are greater than expected, you might be assessed an additional

premium to make up for those costs.

One benefit of the individual retro plan is that it would allow you to have greater control over your own premium costs. If, for example, you were anticipating that you would have substantial improvement in your claims costs over a short period of time, for example, within one coverage period, you might choose to come under an individual retro.

Conversely, the Division will have some sort of a burden to mandate or approve employers or assign employers to various rating plans.

In an individual retro someone might be assigned to be covered under an individual retro if, for example, they consistently have claims that are greater than expected.

By mandating an employer in this coverage, it just provides more motivation for them to clean up their act, so to speak, so that the next year they would try to reduce their claim files.

A group retrospective plan is really no different than an individual retro plan in terms of how the premium is established and how the premium is calculated.

The only difference here is if a group of individual employers get together for purposes of ratings. Now this can't just be any group of any employers. It needs to be a group of homogenous employers, and this would typically mean that they are categorized in the same classifications or the same groups of classifications.

For example, a manufacturer's group, a timbering group, for example. Basically the premium is the same as in an individual retro. One benefit here that an individual retro does not have, however, is that a group retro would allow smaller employers to group together for purposes of rating and, therefore, have a greater influence on the way that their premium is calculated.

The final plan is what we are calling an adverse risk plan. Basically this is a plan that the Division has the ability to mandate for those employers who are believed to have sub-standard levels of performance.

By substandard, this means that they are either not complying with the rules and regulations that are in the big 64 page handout that you-all received, or for example, that their loss experience has just

consistently been tremendously bad.

This would be something that the Division obviously would not take lightly. Mandates into this program would only be made after a thorough review and approval by the Performance Council.

If an employer is mandated in this plan, what will happen is that the premiums that they are charged would be surcharged by a specific percentage.

This percentage would range. It wouldn't always be 50 percent or 10 percent. There would be a realistic or a logical, practical range of surcharge based on the reason why an employer was placed in this plan.

One benefit to this plan -- and there is one; it is hard to believe -- is that if you think of the premium that the Division must collect in terms of a big pot of money, if the substandard level of employers are being surcharged, that means the Division is now collecting more money from these employers, which that means that the employers who are currently complying with the rules and regulations established by the Division are therefore not going to have to pay as much in terms of premium dollars.

So it does impact positively those

employers that are currently having good control of their claims filed.

So we answered the first question which was basically what are these plans and which one is best. The second question is how can I elect to be covered under one of these plans and am I going to be mandated?

Basically, the qualification process would begin with an application. You as an employer may say, "Gosh, I like what I hear about retro. I really want to be in one. How do I start?"

Well, you would document all of the necessary information on an application, what your business operations are, what is your financial status, what coverage plan do you want to be covered under.

This application would then be submitted to the Division and reviewed thoroughly by a Division representative or what we call an underwriter.

They may also request additional information from you such as maybe some more detailed financials. Maybe they want to know more about your savings program.

This information would all be reviewed and then a determination would be made as to why you qualify

for the plan that you are electing, or two, should you really be covered under a different plan.

The documentation and agreement as to which coverage plan that you are going to be covered under would be communicated to you from the Division and you would receive some sort of written documentation from that indicating what is your coverage, what is your coverage period.

The mandate process would work almost in the same way. The only difference is that all mandates must be approved by the Performance Council.

The last question is once I am covered under a plan, how do I know if I continue to be eligible for that plan or if maybe I am now eligible for a different plan?

Basically there will be two types of reviews that will happen at the Division. One is going to be more of a scheduled review of each employers' accounts, typically at the end of each coverage period.

What will happen during this review is that an underwriter would look at the application again if there is a re-application required. They would also look again at financial information and also look at the loss

experience that has happened throughout the coverage period and come to again the same kind of determination that they would come to at the very initial application process.

There would also be Adhoc reviews that would happen throughout the course of the coverage period. By Adhoc, one, a review might happen as a result of an employer making a request saying, "Gee, I am starting a new business; I am doing something new. Does this mean I am still eligible? Can you look at my account? Maybe I need an inspection by one of your field auditors to determine if my classification has changed."

Another type of Adhoc review might occur when somebody in the Division, say in the Claims Department, notices that a claim has occurred that typically might not happen in the employer's particular business operation. It may indicate that a classification change is in order, and that means a review would happen at that time.

In terms of the review, basically it is the responsibility not only of the Division but also of the Employer to communicate when changes occur in the business operation and coverage desires.

So I have tried to answer what we thought would be three of the most pertinent questions in all of your minds; what are these plans; how do I qualify; how can I remain to be eligible; and Chris talked to you a little bit about how the rate making methodology really is the basis for each of these plans.

Now Cheryl is going to talk to you a little about some of the infrastructure that we are currently working on; namely, field audit and credit management and how to decide what.

MS. RANSON: I am going to start talking about Exhibit 14 for those of you I see flipping around here in your pages. I guess one of the first things I want to communicate to you today or even ask you today is do you think what we have on this slide is a problem?

While we were conducting some field audit studies and pilots, during one of the sections or the study we found out that approximately one-third of the employers were misclassified in that study.

Now keep in mind how critical classification is to the rate making process, and now flip the other side of the coin. Approximately one-third of the people in those studies were not classified correctly.

Are those people in your class? You might be asking yourself that.

All right, here are some examples of something that can happen. Loggers can be classified as truckers. That is an easy mistake. Loggers haul logs. Is that the same risk as truckers who haul say, furniture?

Neon glass manufacturers classified as advertisers. How do we advertise? By neon glass sign. Is that the same risk as someone who is actually working with this gas? If anybody here is from DuPont or some of those areas, you might know the answer to that.

Certain high risk occupations classified as clericals because of sub-contracting. This last one, this one happens quite often, and Randy is dealing with a case right now. Salesmen classified as manufacturers.

Randy has a gentleman who started business years ago. He started out as a manufacturer. Ten years ago he changed to where he just sold the items that he had previously manufactured. No one contacted the Division. He has been paying manufacturing rates for ten years.

Now we are not here to look at the past. The Division can take ownership for part of this and the employers can take ownership for part of this, but my

question is and what we are going to talk about today is what are we going to do about this?

What we are going to do is we are going to perform some field audits, and why are we going to do these audits? Well, obviously we have got people out there who are not classified correctly.

So we need to be able to measure or identify the true risk to these employers so that we can have these rates fair and equitable. Remember, if you are misclassified, not only is the class that you are in incorrect, but the class that you are supposed to be in is incorrect.

We also want to ensure that employers are reporting payroll correctly. I am sure everyone in this room reports payroll correctly. Are you sure that everyone in your class is reporting payroll correctly?

Do you want to be the one that is reporting payroll correctly and someone else is under reporting? Again, these all will directly affect your rates.

This is our new component which we are emphasizing in Workers' Comp, is to identify possible safety and loss control candidates.

There are a lot of employers out there that run safe shops. There are some employers out there that are accidents waiting to happen. If we can identify some of these people early, we might be able to reduce some losses, pass them to our underwriters, pass them to our safety and loss directors.

Who are we going to audit? Well, now that we have our computer systems in place, we are getting more data and we can pull out more statistics and we found out that there is approximately 4500 employers out of the 40,000 employers that make up 85 percent of our premium.

If we can get these employers classified correctly, think what a change that would be in your rate with 85 percent of the premiums you know is in the right classification.

We are also going to look at classes who have a history of under reporting, obviously defaults and misclassifications.

If we start getting into a class and we find that a lot of individual employers are misclassified, that is going to be a class we want to look at more closely for audits.

This last one, we will also be auditing

companies based on request, and I want to emphasize we do take requests from employers. We have a fraud line. I can't tell you how many calls I get and I may have gotten calls from some of you in this room that say, "XYZ Company is not paying Workers' Comp. I can't be competitive with them."

You can call that line and we can go out and audit them to see if they are doing that. So that is the why are we auditing and who are we auditing.

The next section which is consistent with what we are talking about, what are we going to do with these audits? Premium audits, classification studies, and preliminary safety review, those goes hand in hand with what we have been talking about.

You are probably sitting out there thinking how in the world are you going to do this, 4500 plus audits? Well, through the RFQ process we are going to contract out through CPA's and PA's and other qualified auditors and we will have a small internal staff who will manage this process.

This internal staff, they will assign audits; they will review them for correctness; and they will pass them on to be updated, but they will also work

with quality control and act as a liaison between the employer and the auditor.

When is this going to happen? Well, we are scheduled to begin January of 1997, and we are hoping that we can roll through these first 4500 in those 18 months.

I cannot emphasize how critical this is to the new rate making methodology. I suspect it was critical to the old rate making methodology, but again looking forward, where is this going to take place? On site.

We cannot really classify employers properly if we haven't been out to the site to see what type of equipment they are using and what type of work they are doing.

The second section that I am going to talk about, which is actually Section 14 of the rule, these are some things that if I were an employer and some of my clients when I was an accountant thought might be nice.

Wouldn't it be nice if Workers' Compensation could shift premiums from those employers who are willing to pay to those employers who should pay?

You might want to think about that, and

probably everyone in this room is wiling to pay, but what happens if someone out there is not paying and there is injury? We are stuck holding the bag and by extension so are you. So we want to shift these costs. We want to get the people who should be paying to be paying.

Can the Workers' Compensation be proactive rather than reactive? Wouldn't that be great? I know that we read articles in the paper and they are really extreme situations, but those seem to be the ones that make the headlines in the paper and they are employers that have run up huge debts and you wonder how did that happen.

Wouldn't it be great if we could react to these employers earlier?

Then the last one, what do you think would happen if we could get our premiums earlier and we could invest it sooner? As our investment dollars grow, we think that would have a positive effect on the amount of premium that we would need to collect.

So basically, these are some of the components of why we came up with Section 14 of the rule, and there are two highlights in Section 14.

The first one is for the first time we are

going to assign an employer a tax liability rate, A, B, or C. We have never done that before. Private industry does it all the time.

If you are in private industry, do you treat your clients that are bad credit risks in the same way when you are measuring your receivables as your clients that are good credit risks? So this is one of the highlights of Section 14.

The next highlight is the Division will determine the frequency of premium deposits for each employer.

For those of you who are out there, when you start reading Section 14, what we did was we tried to make Workers' Compensation deposits more parallel to 941 deposits or for your payroll deposits.

So talk to your accounts; talk to your CPA's or whoever is keeping your payroll and making those deposits. They are probably doing your Workers' Compensation quarterly reports also. These rules will mirror those and you will see that.

Tax liability, I am not going to go over this in detail. Obviously we need to look at some of these things and find out what type of credit rating we

can give an employer.

One of the areas I want to highlight is there are some intangibles that we need to consider. For example, what type of business entity are we working with; what type of industry; is this industry in a decline? We might handle that industry a little differently.

Prior payment history with the Division; management history; do we have someone who started up this business that we have had problems with in the past with the Division? This rule is going to allow us to be proactive with these types of employers.

This last piece on this page where we have the tax liability rating for A, B, and C employers, for those of you who are small employers, this does not mean that you cannot have an A rating, that you cannot be a good credit rating by the Division. This says the tax liability not to exceed. So you can be an A rating and have $5,000 or $2,000 or whatever the tax liability is.

So don't think that because you are a small employer that you can't get a good credit rating from the Division.

This deposit frequency, those of you who are familiar with 941 deposits, you might recognize some

of this terminology, but let me point out something that is a little bit different.

For you employers who might have $500 or less for the fiscal year, at the Division's discretion you might pay annually and then you may settle up at the end of the year. So that is going to cut out paperwork for you.

A hundred thousand dollars or more would move into that accelerated deposit just like the payroll taxes where you would deposit by the next day.

Then if you look at the bottom half for your A and B and your C, we are going to get -- we want our premiums faster from our C rated, bad credit rated employers.

That doesn't mean they are bad individuals. They might have cash flow problems and they might not be able to make that quarterly report or make that quarterly deposit. It just might be too much money, but they could have made weekly payments to us or they could have made bi-weekly payments to us.

So we think that this is going to help us manage our receivables and you won't hopefully in the future see the headlines where someone ran up this bill or

that bill.

The next two slides I am not going to talk about. You can show those to your accountants. They are basically when do I make my deposits. They are very similar to what is in a 941 circular.

A question you are probably asking yourself is what if I don't deposit enough money? That is a question I would probably ask myself. We do have a safe harbor. You don't have to deposit exactly what is required, 98 percent. Then we have a make-up day for that shortfall.

But if you don't get that make-up day and it your fault and if you miss that 98 percent, then you are going to be subject to interest and penalties.

The last page, just summarizing are some questions that I would ask myself if I was reading that. You might ask what if your deposit is required on a day the bank is closed. The date due is going to be the next banking day.

The last one I want to point out here might possibly be from where you read in the paper. The IRS is moving to an electronic funds transfer for taxes. Is the Division going to move in that direction? Yes, we

are, but as I said yesterday, we are going to have to crawl before we walk. So we have to get this deposit down pat before we can move to electronic funds.

Now Ed Staats is going to finish up and talk to you a little bit about anticipation. A couple of points I would like to mention. One of the elements that Cheryl talked about is the concept that if your annual premium payment is $500 or less, you would pay us one time a year.

We believe that that will have a significant impact on small companies in this state. Out of the 40,000 policyholders that we have, 13,000 employers meet that criteria. We are going to try and help a little bit with the paperwork there.

Another point I would like to ask, is Jake Burnside in this room? Jake is a local businessman and he testified at the very first public hearing of this Performance Council. The issues that he presented in that testimony we believe are solved by the concepts in this rule.

Jake was one of the first people that kind of triggered our minds and said, "Let's look at this a little bit differently here." So I was hoping Jake was

here.

Does anybody remember the ketchup commercial several years ago? There was kind of a white background and there was a bottle of Heinz ketchup and the ketchup was just slowly oozing out and in the background was Carly Simon singing "Anticipation." Well, that should be your expectations for us implementing this rule.

If you will look at Page 60, Sections 19.1 and 2 of the rule, it talks about the time frame under which we want to implement it.

Even though over the past several years we have crafted changes in claims management, financial reporting, changes in receivables management and upgrading of our internal people skills and upgrading of our technology, redesign processes, expansion of our statutory authority under Senate Bill 250, the development of a constant vision for a better Workers' Compensation system, those foundation pieces which are so necessary to the implementation of this financing plan has not corrected or overcome all of the obstacles we face in order to bring you better value as our state holds.

Those obstacles still include a very critical need to clean up information such as the

classification audits; a critical need for support of a very sophisticated technology system; a critical need for changing our existing complement of human skills to include insurance risk management skills that are possessed by people committed to do whatever it takes to improve this system.

A critical need to communicate with and educate the state holders of our system; to understand the impact of your action; and a critical need for commitment from you to support what we are attempting to do; a critical need to avoid organizational procrastination within the Workers' Compensation organization; and a critical need for our state holders to understand that in the long term this financing plan demands great change in how we all do business.

It cannot be done overnight. The obstacles to success are very great, but we can achieve success. It has been done in other states. The Fund is so much more capable of being able to implement such a sophisticated financial plan than ever before, but like every success and every solution it will bring its own set of problems.

This rule will create some additional

challenges to you and additional problems for the Funds. Employers, for instance, will be inundated with proposals from organizations to develop loss control programs.

You will be inundated through your associations with offers to administer the various plans that we are offering under our financial program.

You will have to judge these proposals on a what is in it for me basis. Who will do the best job for me or my group; what are the services you are going to receive; what kind of reports do you have to file; what kind of criteria do you have to maintain; what is your risk of being part of the group; what are the costs to be part of this group; how does that impact your total investment in loss control?

The rule also requires the exercising of informed skill judgment by Fund personnel. Failure to do so will create an equity beyond those we are trying to overcome and bring additional mischief.

This rule requires adherence to new policies and procedures by employers and their representatives as established under the authority of the Performance Council with adequate safeguards with review and reversal of improper judgements or abuses.

Failure to develop these safeguards will result in additional mischief. Successful implementation can generate significant benefits to the employers and their employees in West Virginia, the most significant of which is the opportunity to share what is going on across the country.

All across this country there are stories and examples of successes where employers and their employees working together have prevented injuries, have reduced their Workers' Compensation costs, and have shared the benefits.

This rule encourages the development of such successes in this state. The benefits to the state, to all of us is a more financially viable Workers' Compensation system, thereby improving the State's overall financial condition.

It is the opportunity to win for everybody except for those who do not attempt to control and prevent injuries. Under this rule they will be more responsible for paying the cost of insuring their risk, and this approach is not intended to allow the shifting of that risk to other employers within this state.

There are many people committed to

changing the Workers' Compensation system. We hope we are on the right track. We want you to tell us if we are on the right track, and if we are not on the right track we want you to help correct our direction.

The next session of this is a question and answers about this presentation and I think Randy is going to conduct that.

MR. SUTER: What a crowd? I have spent a lot of time standing over there. I was feeling like an accident about ready to happen. I am referring now to my brain, but in any event, we would like to have a brief question and answer session prior to the public comment.

You can still have an opportunity if you want to make a comment on the record at the close of this question and answer session. So don't think this is your comment time.

Anyone who has any question with regard to this particular rule? Yes, sir. Would you stand up, please, and identify yourself because we have a Court Reporter and she is putting this all on the record. So she needs to hear you.

MR. ZINN: I am Paul Zinn from American Alloys. The question I have is this a pretty much a done

REPORTER'S CERTIFICATE

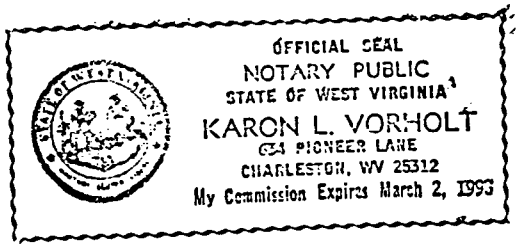
STATE OF WEST VIRGINIA,

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 4th day of October, 1996.

Karon L. Vorholt
Certified Court Reporter



- - -

- - -

WEST VIRGINIA WORKERS' COMPENSATION DIVISION
PERFORMANCE COUNCIL RISK MANAGEMENT RULES

- - -

Independence Hall
16th and Market Streets
Wheeling, WV 26003
Friday, September 20, 1996
at 9:05 a.m.

MEMBERS OF THE COUNCIL:

Andy Richardson
Chris Jarrett
Thad Epps
Paul E. Thompson
Everette Sullivan
Richard Humphreys

Ed Staats, CFO
Chris DeAngelis, Risk Management Team
Amy Graves, Risk Management Team
Cheryl Ranson, Risk Management Team
Randy Suter, Legal Services

- - -

TRANSCRIPT OF HEARING

- - -

Reported by:

Jennifer J. Skupnik
Registered Professional
Reporter

LAWYER'S NOTES

PAGE	LINE	

- - -

PROCEEDINGS

- - -

MR. RICHARDSON: Good morning. I really appreciate everyone coming out this morning to Independence Hall. It's appropriate that we are in the building -- it's appropriate that we are in the building that brought us the birth of West Virginia, because what we are really talking about today is a system of pricing workers' compensation insurance in West Virginia that would bring a birth of a new way of doing business with the workers' compensation program.

Now, let me explain for just a moment what I'm talking about. This public hearing today is a direct result of Senate Bill 250 that was enacted by the West Virginia legislature in 1995. Now, that legislation has got a considerable amount of coverage throughout West Virginia, but a particular provision that hasn't got talked about a whole lot was a requirement by the workers' compensation -- by the legislature that the workers' compensation system make changes in the way we price workers' compensation insurance for employers, and the way we rate

- - -

employers, and the way we classify and audit employers for their workers' compensation risk.

My name is Andy Richardson, I'm the Commissioner of Employment Programs for the State of West Virginia, and I want to welcome all of you here this morning. I particularly want to welcome my cousin, Dave Johnson, who showed up today; it's always good to see family. I also know that he and his business have experienced frustrations with workers' compensation costs over the years, so it's a problem that we all face.

The purpose of this today is two-fold, first is for our staff to spend a few minutes informing you and educating you about the changes that are coming in the workers' compensation system regarding rate making and underwriting. What we will do is the first 45 minutes or hour or so of the program we will devote to education, and ask you to follow along with the handouts and learn a little bit about what's coming down the pike.

The second part of the program will be an opportunity for you to offer public comments, to come up here, state your name and affiliation, and provide

- - -

public comments regarding rate making, regarding risk classifications, regarding the specific proposals that we have here in front of you.

This has been an undertaking involving the staff of workers' compensation, and a work group of labor representatives and management representatives, and this is a draft proposal. What you have in front of you is a set of regulations that are proposed to be implemented by the compensation program's Performance Council. This set of regulations was put out for public comment in August, and let me get a copy of those real quick.

If you will note right down here on the regulations it says, the last day for written comment is October 8, 1996 at 5:00 p.m., and you will note that there is an address, an individual who you will meet in a few moments, and his address; that will be the person you direct those comments to.

I don't expect everyone to absorb and understand fully these regulations today, it's a pretty thick set of proposals, but I would like to encourage you to go back after the meeting today, review this, consider this; discuss it with your

- - -

insurance advisors, your accountants, your attorneys, whoever you feel you need to talk with, and give us feedback because this is -- this is for you, our customer, the employers. It is for you, our customer, the workers.

It is to try to make our system more responsive to safety and accident prevention efforts, and the failure to pursue safety and accident prevention efforts. Now, who is the compensation program's Performance Council and why are they here?

Well, in 1993 the legislature in an effort to bring a measure of consensus to this highly divisive issue in the State of West Virginia created a nine-member board that oversees major issues surrounding the West Virginia's workers' compensation system, and that board is made up of four representatives of the interests of workers, and four representatives of the interest of business, and myself as the Commissioner of Employment Programs, I'm stuck in the middle.

Now, I'd like to introduce the members of the council that are here with us today and their affiliations. At your far left, my far right -- and

- - -

as a businessman I'm sure he would be more to the right than to the left -- I'd like to introduce the president of West Virginia American Water Company, Chris Jarrett. Wave to them, Chris.

MR. JARRETT: Right here.

MR. RICHARDSON: Chris represents -- his affiliation on the council is as a representative nominated by the West Virginia Chamber of Commerce. Next to him and not quite so far to the right is Thad Epps, who represents the interests of manufacturing companies.

Not by design to separate the two, but only to provide plenty of room for the overhead, over here we have the guys from labor, and let me move over here so you can maybe see who they are.

Dick Humphreys from the West Virginia University -- well, actually he is now retired, but he used to be with the Institute for Labor Studies, and he represents the interests of workers generally. Dick, can you give them a little wave. He's right here behind this pillar (indicating).

Everette Sullivan represents the interests of construction workers. Paul Thompson represents the

- - -

interests of manufacturing workers.

MR. THOMPSON: We did negotiate the far left.

MR. RICHARDSON: They took what they could get, didn't they? But it's all a matter of prospective, the businessmen from your view are on the left and the labor guys are on the right, and up here they are on the right and labor is on the left, so it just tells you something about political spectrums.

Now, what you're going to learn about today is a rebirth for the workers' compensation systems pricing and rate making and underwriting. Now, there are several components to this. Basically right now there's two ways for workers' compensation insurance to be provided by employers to their workers in the State of West Virginia.

One is as a regular subscriber to the Workers' Compensation Fund you have what would be called in the insurance industry a guaranteed cost program, where you pay a premium and the Workers' Compensation Fund as your insurance program pays a first dollar of coverage for every accident, every medical bill that is associated with an appropriate to pay related to a work-related injury.

- - -

Okay. The second type of insurance is self-insurance. If you are big enough, have enough employees, have enough payroll, have enough financial stability, have enough safety and accident prevention programs in place, you may qualify to bear your own risk, if you will, and pay the workers' compensation obligations yourself as the employer. You know, if you don't fit into that category then you are in the guaranteed cost program.

Now, to meet this mandate that the legislature laid forth we plan to offer new types of insurance policy options with the workers' compensation program, but we have got to do it right, and heaven knows that the West Virginia workers' compensation system does not have an exemplary track record of doing things right; we will admit that.

First thing we have got to do better is field auditing. We have got to be able to more effectively go forward, identify the payroll that ought to be paid, make sure that the risk classification is appropriate for the type of work that people are doing at that employer, and be certain that the information that is being provided to the workers' compensation

- - -

insurance program, the Workers' Compensation Fund in this State, is accurate from the employer.

The second component of this is a healthy dose of safety and accident prevention. West Virginia has 70,000 claims each year. We have a civilian labor force of slightly in excess of 700,000 people. Now, folks, that's too many accidents, and a lot of them are medical benefits only, I'm sure. You know -- I mean, I had someone at one of the meetings say, well, yeah, but some of those claims aren't appropriate. Sure, that's true, but the bottom line is 70,000 claims.

We need to bring that down, and the way we are going to do that is with a healthier involvement of safety and accident prevention involving the employer, your workers, and the workers' compensation program, and that will be a key part in reducing costs because it will reduce accidents.

Now, the third area has to do with underwriting and rate making, and that is going to be the main thing we talk about here today, and I'm going to come back to that in just a second.

And then the fourth area has to do with

- - -

account -- with collections and accounts receivable management. We had an old computer system, we didn't do a very good job at tracking how much a company had paid, how much a company owed, we have never had any type of credit risk analysis, and what you're going to see today is that we are putting in place a program that's already showing results.

Our collections impact last year was very significant, collecting about 45 million dollars more in premium than we had projected we would collect because of our more aggressive approach to collections and accounts receivable management, but we are now going to have the tools in place to do that better, and it might -- it might involve how frequently you pay your premium, it's going to involve some credit risk analysis, a lot of things of that sort.

Now, two types of insurance coverage are available right now; guaranteed costs, self-insurance. Today you will learn about an adverse risk pool where we take the really bad risks and segregate them over here for their rates so that it doesn't affect the rates of an employer that is doing everything they can, and, in fact, having a safe and

- - -

cost lowered work environment so that the bad cost employers aren't bringing up your rates.

You will learn about a concept called retrospective rating, and without getting into a whole lot of detail on that, let me just describe it this way: You and the workers' compensation program would estimate how much your costs would be at the beginning of the year, you pay a premium as a result of that estimate; at the end of the year we will settle up. If your costs have actually been more, you would owe us some more money; if your costs had actually been less, it will be a rebate. It's a pretty common concept in insurance practices.

The last concept would be deductibles, and we all know about deductibles, we can understand deductibles, and the fact is if Mr. Thompson and I drive the exact same kind of automobile, which we don't, I have seen his, it's nice; I drive a Chevy Corsica and it was used, he drives a big Cadillac.

Anyway, if we drove the same type of car, same nature of risk, if I don't have a deductible or I have a $100 deductible and he has a $250 or $300 deductible, my insurance cost is higher than his

- - -

insurance cost because he's bearing a greater portion of the risk up front himself, and in the context of workers' compensation insurance the same type of theory can apply, and, in fact, does apply in a lot of places throughout West Virginia.

I'd like to introduce the people that will be a part of this presentation that you will hear in the next few minutes. We have Ed Staats who is the chief financial officer for the workers' compensation division. Chris DeAngelis, who has been a part of our risk management team. Amy Graves that's a part of our risk management team. We gave Amy a tough time today or yesterday at the public hearing in Morgantown, and just because we are out of the University City doesn't mean we want to continue that today because I know we all share in our hope that we soundly defeat her Alma Mater, Purdue, this weekend.

We have Cheryl Ranson -- I'm sorry, Cheryl -- also a part of the risk management team, and Randy Suter from our legal services division. The important thing to remember is, number one, these are conceptions; we need your feedback in order to develop the final product.

- - -

Number two, it will only be as good as your involvement; you are our customer. And, number three, this is all driven by an effort and a philosophy to make workers' compensation insurance in West Virginia look and feel more like insurance, and more effectively respond to efforts in the workplace to prevent accidents and promote safety.

So over the next few minutes you will hear the thoughts of the team. I appreciate your time and attendance this morning, and we look forward to your questions and comments. Thank you. Ed.

MR. STAATS: Thank you, Commissioner. I want to welcome all of you on behalf of the team. Basically what we are talking about here is a plan to finance workers' compensation in the State of West Virginia in the future.

This plan is known as Series 9 risk management, it represents another milestone along an evolutionary road to change the workers' compensation system in the State of West Virginia. The direction that we have established when we sent these brochures to all 40,000 active employers in this state indicates that there is substantial interest in this change in

- - -

direction, indicates that there's substantial agreement with this change in direction.

I'd like to -- when we sent this out we started getting phone calls, Cheryl I think got a couple hundred phone calls in two days, and let me read to you just a summary of some of those calls. From a company in Weirton, the people in the office cheered when this brochure was passed around. They were very complimentary about the proposed changes; they have already seen positive changes in our claims management effort.

They were very excited about the retros because their company had actually already instituted risk management programs, and it had not been reflected in our current methodology of calculating experienced rating formulas. They suggested that we not require a deposit for companies who have a good history with the Fund and a good credit rating.

The Bavarian Inn in Shepherdstown, the manager called, they wanted a retro; wanted to know how they could sign up. They were very excited that someone is finally looking out for the people that don't have claims.

- - -

A small cabinet manufacturer, their premiums had gone up, and they had been working hard to control their losses; they wanted to see multiple classes. They were concerned that someone would keep this rule from going through, they felt like it was for the little guy.

Exhibits 2 and 3 of your handout reflect the objectives that we are trying to achieve, but the objective that most reflects the underlying strategy of this financing plan is the one on Exhibit 3 that begins Create a Framework.

The strategy is a back to basics fundamental recognition that the financial ills of workers' compensation can be corrected by employers and their employees if the system provides methods for those groups to directly influence workers' compensation rates.

This financing plan fixes the responsibility for rates with employers, and provides rewards if prevention of workplace injuries occurs and is reflected in the reduction -- in a reduction in injuries. In other words, those 70,000 injuries begin to reduce, this plan creates the credits for those.

- - -

Such a strategy to be successful, though, requires a full and complete disclosure to you of all policies, procedures, practices, methods, cost drivers that impact your rates. How many people can tell me how workers' compensation calculates your rates? Just hold up your hands. Other audiences I have got two at the most, and they should have been able to tell me, they were at DPA.

We want you to know how this happens and how your insurance coverage is priced. That is the only way you can help us achieve the objectives. A real detailed presentation of this 64, 65 page rule today is impossible. We are willing to do it if you are willing to sit through it for the next three weeks.

We do plan and you will hear about educational seminars that talk in detail about how this works, that trains people and educates you in how it will work; those are coming.

The Commissioner introduced the folks on our risk management team, I want to go through some of their backgrounds and let you know a little bit more about them. We have some very committed people here, and their efforts are going to impact how you do

- - -

business for a long, long time to come.

First of all, Cheryl Ranson. She is a certified public accountant. She has a degree in mathematics, physics, and science from WVU. She has a degree in accounting from the University of Charleston. She has six years of private sector accounting and management experience, along with eight years as an instructor in mathematics and physics.

Amy Graves, who does not have black and gold on today, is a graduate of Purdue; she has an MS in management, and she is also a graduate of the University of Michigan with a BA in economics. She has five years experience in the life, health, and property and casualty industry with CNA and Met Life, as well as three years experience as an account analyst for Travelers underwriting pricing and marketing workers' compensation coverage.

Randy Suter from our legal services division is a 1978 graduate of the West Virginia University College of Law. He has experience in private practice as well as 16 years experience in various state agencies.

And, finally, Chris DeAngelis. Chris has a

- - -

BA in finance and actuarial science from the University of Illinois. He has seven years experience in property and casualty insurance, including pricing and reserving of workers' compensation coverage. He has worked with such companies as Allstate, Kemper. Chris is going to discuss rate making.

MR. DeANGELIS: Good morning and welcome. As mentioned, there are many facets to the initiatives that are going on. In talking about rate making, what we are referring to is the formulas, the calculations, the methods; all of the assumptions that are used to calculate not only the classification base rates, but also each individual employer's rates.

I'm sure if many of you in the past have tried to inquire about how your rates are calculated, you probably felt like this gentleman here in the picture where you are just kind of left hanging, you are not really sure how you got there or how you are going to get down.

Well, today we are going to talk about some of the changes that we are proposing and that we want to implement that are going to change a lot of those things. The proposed rule that we are talking about

- - -

is really what's given us the latitude to design these changes, but as Ed said, it's very comprehensive, and today we really can't go into too much detail, we are going to give you a high level presentation.

At the same time as we go forward with implementation in the next six months we plan on having educational sessions that will get more into the technical concepts and methodologies involved with how the rates are actually determined.

What I'd like to talk about today is four main objectives that we approached to design and discuss them with you. They are, the first one, we wanted to make it so that the methods -- each classification is going to be carrying their own weight and they are going to have to pay for the costs that are absorbed from their industry.

Secondly, we wanted the methods and the formulas to be more responsive to each individual employer's claims experience. Thirdly, we wanted a model that more clearly communicates to you, the employer, how the rates are calculated, what is driving the costs, and how can I as an employer reduce those costs for myself.

- - -

Finally, we needed a model that allowed flexibility and adaptability, so that not only we can adapt to the changes within the West Virginia workers' comp environment, but also support new alternative rating plans, which will be talked about here shortly.

As I said, it was the rule that allowed us the latitude to design the new methodology, but really the foundation of what is going to allow us to implement it is something that happened and started a few years back with the Division putting together and implementing two new administrative systems.

One of them, the MIRA system, is a world class reserving software product that allows us to capture a significant amount of more data, I think it's like 160 or 190 some odd variables that really allow us to add more comprehensive analysis.

The second system, the WCIS system, more serves as a database and a tool for us to aggregate the data, sort it, get it in the format we want it so that we can perform the analysis, but, as I said, the first objective mainly focuses on the industries that create the costs are going to pay for the costs.

- - -

So if I'm a widget maker, and I'm in Class X, all the costs created by all the widget makers is going to be somewhat consistent with the premiums collected by the widget industry, and that is possible because, as you see on Exhibit 5, we talk about the ability to collect more data, and having that data allows several things.

One of them is to have these more comprehensive formulas that are more reflective and also allow us to understand some of the trends that are going on within each industry, but at the same time it allows us to have more formulas which serve as a check and balance when we look at the different projection methods; now that we are able to look at it from different perspectives we can validate the results and make sure that the rates we are coming up with are pretty close in line with where they should be.

Several other things that are going to happen is you will hear from Cheryl about the field audit. This is crucial because what this does is it allows us to ensure that all employers are in the correct classifications, and that's very important because

- - -

it's their claims experience that goes into what we determine the class rates for those particular industries, and if there's people who are in the wrong classes, then that drastically impacts that particular industry.

For example, if one industry is very high costs and they are in with an industry that's very low costs, they are going to drive those rates up in that class. So it's important that we get everybody into the right classifications.

Other projects will be happening as well where we are doing this in-depth analysis for various industries and classifications just to get a feel and a pulse for what's happening in that industry, and are the rates redundant, are they deficient, do we need to raise them, lower them, et cetera, et cetera.

Our second objective is to make the rates more responsive to an actual employer's individual experience. Actually, I'm going to put this slide up here first as an example. What I mean by this is -- wrong slide, sorry -- what I mean by this is if you are somebody that has actual losses up in the upper left-hand corner, if you have actual losses that are

- - -

lower than what we expect, and it's the expected losses that are a part of the new formula that I think makes it more equitable, then you are going to have lower rates in the class than everybody else in the classification, or at least the people who are the average folks.

So what this does is it enables us to look at your experience, and then figure out based on that rate in your class whether or not you are doing what you should be, you are doing better, or you are doing worse, and we adjust your rate appropriately. So in this case if I'm the widget maker and I have better experience, my rate goes down from $10,000 to $8,500, and this is just for the loss portion at this point.

How can we do this? I'm getting my slides all mixed up here, so I have got to make sure I grab the right one here. How do we do this? Well, again, it comes back to the ability to have more comprehensive data and more analysis tools, but at the same time as we get into the individual classifications and the individual employers, the model allows us to adjust some things to be more reflective to the individual employers.

- - -

Some of those things that we can look at are how many years of claims experience do we really want to use for this industry, how much weight do we want to give to an employer's own experience, how much do we want to limit large losses so that we don't skew results, and it's things like this that we have the opportunity now to look at and adjust and make it more responsive to each individual employer's costs.

The third objective is to do a better job in communicating to you, the employer, how the rates were calculated, what is driving the costs, and what can you do or which portion of that rate do you have more control over? We want to be able to itemize.

As I said earlier in the last slide, the costs that I was showing there are just the loss costs. We want to be able to break it down by what portion of it is the lost costs or what I mean by that is what is produced by the claims, and then we also want to break out, okay, well, this portion is really because of expenses, and expenses are a part of administering any program. Maybe part of it goes towards a deficit reduction program to make the Division more fiscally viable.

- - -

We want to be able to break these things out, and there's several other things that may be included; the QLMP, qualified loss management program discount, which is another rule that's going on; loss prevention surcharge, adverse risk assessment. You will hear about some of these other things. We want to break all these portions of your rate out so you know, so that when you get your bill you actually know what the components of the costs are.

Again, if we get back to our friend who's the widget maker, originally it was $10,000 for his losses, to pay for his losses, but because we looked at his experience and it was better that was reduced by $1,500, so that's to $8,500, and then, okay, I'm paying another $600 for administrative expenses and maybe $900 for deficit reduction, so my total bill is $10,000.

We want you to be able to understand what the different components are so that you know that part of the loss, the $10,000, is really where you have the most ability to impact, and by reducing your losses you can go ahead and reduce that in this case by $1,500.

- - -

Finally, the fourth objective is to put together a model that allows the flexibility. In the past, and I know it's been mentioned that some people feel like creating the rates has been hocus-pocus and nobody has really understood what's happening.

Well, for the first time this new methodology allows the folks that sit behind the table here, the Performance Council, who as introduced you realize that they are a diverse group representative of employers and employees and their interests. These are the folks that are going to have the ability to make decisions on different aspects of how the model is implemented and really have great input into some of the different parameters that are involved.

So as a result of that things will be a lot more open, we feel that the people who are most interested in yourselves are going to be making some of these decisions, and at the same time because of -- with this adaptability we also have the flexibility to support some new products that Amy is going to talk about right now.

MS. GRAVES: As Chris mentioned, the rate making methodology is going to allow for some

- - -

flexibility in offering to employers various alternative rating plans. What I wanted to talk to you about is those rating plans, and basically try to answer what may be the three major questions that you have right now.

One, what are these plans and which one is best for me? Two, how do I qualify or become eligible to be covered under one of these plans? And then, finally, once I'm covered by one of these plans how do I know if I can continue to be eligible to be covered for subsequent periods?

As Chris mentioned, there are various alternatives, however, the two major standard coverages that will be continued to be offered are guaranteed costs, which is known as the regular fund, and self-insurance, and the other ones that I'm going to talk to you about are the deductible, individual, and group retrospective plans as well as an adverse risk plan. All of these plans are referenced in the rule -- in Sections 9 through 13 in the rule documents that you have in front of you.

So, first off, deductible. We will start with an easy one. Most of you are probably already

- - -

very familiar with a deductible plan, very similar to what you have on your personal automobile, your health insurance, your dental plan. In exchange for assuming financial responsibility for a certain deductible amount for your claims up to a certain dollar amount, you receive premium reductions.

The only difference here is that obviously we are talking about workers' compensation, and the deductibles would generally be a little larger, ranging perhaps anywhere from $100 up to perhaps $10,000. That's something as we move forward into implementation we will be determining what are those deductible amounts for your classification or your industry group.

The primary benefit of this obviously is the premium reduction that basically allows you to in a sense self-insure a portion of your risk; it also is very beneficial for smaller employers allowing those employers that currently might not have the ability to take advantage of an experienced rate to have the opportunity to select a deductible option and receive premium reductions; it also benefits smaller employers that might not currently qualify for a self-insurance

- - -

plan.

The next plan is an individual retrospective plan. Basically this plan would be offered to those employers who satisfy a basic premium and loss experience requirements. As the Commissioner stated, what an individual retro plan does is once you are eligible or have selected coverage under this plan, you would pay the standard premium that Chris had talked about, your base rate times your classification modification, and what that standard premium is basically is what you would pay up front for the individual retro.

At the end of a specified coverage period if your losses were less than what was expected, you might receive a premium rebate based on that standard premium. If, however, your losses have been greater than expected, you might, then, be assessed an additional premium at the end of that coverage period.

This plan allows employers that are continuously making improvements in their claims experience to benefit from premium reductions at the end of a coverage period that might be shorter than

- - -

the typical experience rating period; however, it also could be mandated for employers that have consistently had worse than expected claims experience, and I will talk a little bit more about the mandate process as we go forward.

The group retrospective rating plan in terms of how premium is calculated and the settle-up concept at the end of the rating period is basically the same as the individual retro plan, however, the only difference here is that obviously it's offered to groups of employers. Well, it can't just be any group, it has to be a group of employers that are classified similarly or in a similar industry group.

Also, this group must be sponsored by an association or some other sponsoring organization that has been formed to assist the group in managing safety and controlling claims costs. This allows -- also allows smaller employers to group together, and, therefore, have a greater impact on the way their individual premiums are calculated. So, again, another benefit for the smaller employer through the group rating plan.

The adverse risk plan, obviously by the word

- - -

adverse you know it's not something that you are going to want to be signing up for. This plan has been designed for the substandard employer, and what I mean by substandard is those employers that have been out of compliance with the rules that you have in front of you, they perhaps have not agreed to submit to a field audit, perhaps their financial ratings have declined significantly in the past, or perhaps they have had tremendously bad loss experience.

This is a plan that allows the Division to place these employers in a category and surcharge their premiums based on the reasons for why they would be mandated in this plan, and the reasons for mandates or the criteria for a mandate in this plan are listed in Section 12 of the rule.

This mandate process is not something that obviously the Division is going to be taking lightly. Any placement into this plan would have to be reviewed and approved, not only by a Division representative, but also by members of the Performance Council.

Now, it may not be evident of what kind of benefit could be coming out of this plan, but there is one. If you are an employer that has consistently

- - -

been in compliance with the rules and regulations of the Division, this plan can benefit you.

If you think about the dollars that the Division collects in terms of premium as a big pot of money or a pool of money, if employers with substandard levels of performance are being surcharged, that, therefore, means that employers that are currently complying with the rules and regulations would, therefore, have to pay a lesser portion of that pool of money. So that's a little bit about the plans; what are they, which one might be best for me.

Second question might be, okay, I'm really excited now, I kind of have an idea of what rating plan I might be interested in; how do I sign up? Well, as we go further along in our implementation mode there will be applications that will be submitted to you, and that you would fill out this application and indicate which coverage plan or rating plan that you would be interested in being covered under.

Information that you would be providing on this application would include such things as what your organization does, a good description of what types of activities you perform, some of your

- - -

financial information; for example, for a deductible plan if you are assuming a large portion or a large deductible, say $10,000, this would require on the application a greater explanation of your financial results, perhaps some audited financial statements.

So those types of information would be reviewed on the application that would be submitted to the Division. The Division representative or underwriter would then look at this information and make a determination as to whether or not a specific employer would be eligible for one of these plans.

The other thing that would happen is once the determination has been made, each employer would receive documentation of what coverage plan they are covered under, as well as what their coverage period would be. Typically the coverage period is an annual period starting July 1. As we move further into implementation, there may be some other opportunities for alternative coverage periods, possibly shorter than a year or longer than a year.

The rating plan mandate process works basically the same in that applications would be reviewed, financial information would be reviewed;

- - -

however, as you can determine by the word mandate, the Division representative or underwriter might look at some of your experience and indicate that this plan is what the Division recommends that you would be covered under, and that would be up to the Division to make that determination based on the information that they have reviewed.

The final question is, okay, say I have been covered under a deductible plan for the last year, how do I know if I can continue to be eligible for this plan after that year has expired? Basically there will be two types of reviews conducted by the Division, as well as reviews conducted in response to employer requests.

One is the scheduled review. This review would typically be performed by the Division representative at the end of a coverage period. Information that would be reviewed would include the same type of information that was reviewed at the original initiation of coverage; financial information, information that exists on the application, there may be a request for a new application to get that additional information.

- - -

The other type of review is more of an Adhoc review, and this review can occur for two reasons; one, a Division representative such as a claims representative might have noted that a claim has occurred that really doesn't seem like a claim that should occur for a particular classification.

In that case the claim representative might mention this to the underwriter for that specific employer's account and say, why don't you check this out, this looks a little fuzzy to me; at such time the Division underwriter might make the determination that the classification doesn't quite appear right, and then make a request for a field audit to be performed, and Cheryl is going to talk to you a little bit more about what that would entail.

The other Adhoc review might occur after a time in which an employer contacts the Division and says, hey, I have purchased a business or I'm doing something different than I was doing before or I have moved my location; those types of requests would then prompt a review to be performed by a Division representative. Basically any responsibility for coverage or alteration of coverage is shared by both

- - -

the employer as well as the Division.

It's basically an interactive process, and the responsibility should not be weighted on one or the other; it should not be a one-way street. And now Cheryl is going to talk to you a little bit about the field audit and credit management policies and procedures that will help support the administration of these plans.

MS. RANSON: I'm going to use a microphone. Can everyone hear me? I'm sort of losing my voice, this is the fifth one of these that we have done, and I think my voice was maybe quivering a little bit yesterday as I was trying to talk to the back row.

I'm going to be talking a little bit about some what I consider common sense today. Common sense, but something that we may not have thought about or something we may not have looked at.

Okay. The first thing that I want to talk to you about is the audit, and I want to ask you and I want you to think about this. When we were conducting a phase of a pilot program, we found that approximately one-third of the employers that were in that segment that we were looking at were

- - -

misclassified. Think about that. One-third of the employers. One-third of the people in this room possibly. Let's look at some examples of some things that might happen.

For example, we might have loggers who are classified as truckers. Can any of you think how that can happen? Loggers, don't they drive trucks around with logs in them? Yes. Is that the same risk, though, as someone who might drive a truck around that has furniture in it? Remember, these guys are also cutting down the trees. Probably not, but yet we probably have a lot of people classified like that.

Neon glass manufacturers classified as advertisers. That's probably one of my favorites. I guess you can think how that could happen or did happen. What are all the signs that you see that are advertised made out of for the most part? Neon. But I dare say those of you who are here that work in the chemical industry or work with those types of gases, you would probably realize that that's a much higher risk than someone who's in advertising. Maybe. Somebody is laughing in the back, somebody must be in advertising here.

- - -

Some of our high risk occupations are classified as clericals, and that can happen because some high risk people are subcontracted, and it basically is from the history or our stereotypical subcontracting person is normally a clerical, that's what we would think of, and with -- we have to keep up with today's business; people are subcontracting out a lot of different options.

Then the last one, salesmen classified as manufacturers. That happens all the time. People start up businesses as manufacturers, and they decide for whatever reason they don't want to put up with those hassles, but they can sell the product, so they forget to call in and tell us that they are now selling the product, and they might go on for 10 years or 15 years paying a high rate. Manufacturing is a much higher rate than sales.

So the Division can take responsibility for some of this, employers can take responsibility for some of this, but that's really not what we are here to talk about today. We are here to talk about what are we going to do about this.

This is critical to rate making. There is no

- - -

way that we can come up with fair and equitable rates if we don't know what classes people are in. You have to have a basis to start with, and if we don't have that basis we can't come up with those rates.

So we are going to conduct field audits. Other than the reason that you just saw, these are the specific reasons of why we conduct field audits or are going to conduct these audits. We want to make sure that we know the employers true risk; again, are the employers classified correctly.

The second one, we want to ensure that employers are reporting payroll correctly. What happens if you and your friends and so forth are the ones that are reporting payroll correctly in your class, but maybe some of the other people aren't? Or maybe they are not reporting the payroll in the appropriate class; they might have a couple of different classifications. You don't want to be the employer that's reporting the payroll correctly in that situation, you see what can happen to you, your rates might be higher maybe.

Getting back to this misclassification issue. One of the things that I started pointing out

- - -

to people is not only is the classification that you are in incorrect, but the classification that you should be in is also incorrect. So I think you can see the proportions of that one-third dynamic that we are talking about.

The last segment of why we are going to do field audits is something you are going to hear a lot about in the future for workers' comp, and that's to identify possible safety and loss control candidates.

There are a lot of employers out there that run safe shops, there are a lot of employers out there who have accidents waiting to happen that have been very lucky, and we want to take a look at that, give them a preliminary safety-type survey, and then we will pass that on to our underwriters or to our safety director.

Who are we going to audit initially? Well, one of the things Chris had talked about and the Commissioner talked about is our new computer systems that are in place. We are starting to be able to get more data than ever before on workers' comp.

We are starting to be able to see the whole picture, and part of that picture is we found that

- - -

approximately 4,500 employers comprise about 85 percent of our premium. 4,500 out of 40,000. Think about that. What if we could get that 85 percent of the premium classified correctly?

Think about what that would do, you know, that would go a long way for making our rates more fair, more representative, and more equitable, and that's what we are going to shoot for. We are going to also look, though, at classes that have a history of underreporting. There are some certain classes of employers that have a history with the Fund, default or misclassification.

The last point that I want to talk to you about is we are also going to look at people that employers report to us. Every stop that we make in the state we have an employer that tells us, well, I know XYZ Company is operating and they are out of another state and they are not paying workers' comp, and I can't be competitive and so forth.

We don't have any way to fix that if we don't know about it, so we are going to rely on you to report these individuals to us or it might be some individuals who might be paying under the table or

- - -

whatever. We are going to count on you. We cannot fix that if we don't know about that, so that's going to be another critical piece of that audit function.

What are we going to do in the audit? Well, this shouldn't surprise you, this goes hand in hand with the reasons we are going to do the audit. We are going to look at the premiums; are you reporting the right amount of payroll? Are you reporting it under the right class?

We are going to look, again, at the classification. Are you maybe reporting as say a clerical-type industry, but you are actually reclamation type? We are going to look at, again, a preliminary safety review.

How are we going to do this? That was the question that I asked when we first talked about this because we certainly don't have enough individuals in the Division to do this.

We are going to through the RFQ process, contract CPA's, PA's, and other qualified individuals to go out and perform these audits for us. We will have internal staff on hand to manage this process and who will assign the audits, review the audits that

- - -

come in, and act as a liaison between the auditors and you, the employer.

When is this going to start? Hopefully January of -- I start saying 1987, but that wouldn't be right -- January of 1997, and it will take about 18 months. That's what we are counting on. And then we will also have regularly scheduled audits that will be conducted after this initial what we have been calling an audit blitz.

Sometimes if people know that there's a chance that they are going to be audited, that makes them maybe a little better at computing that premium or reporting that payroll. And where is this going to take place? It's going to take place on-site where the employers actually are located. That's really the only way that we can tell what classification or what kind of equipment you are using; that's a way that we can assess your risk.

The next section that I'm going to talk about is actually Section 14 of the rule, and this is, again, something that I consider common sense or something you might have not been thinking about, but you might want to start thinking about, and the first

- - -

one is wouldn't it really be nice if the Division could shift premiums from employers who are willing to pay, which I would venture to guess is everyone in this room, to employers who should pay.

You know, I heard someone say at one of our hearings that workers' comp is like a big bag of jellybeans, and we have to get enough money to cover those costs, and that is true and that's what we have been doing, but now what we want to do is to have the people who are actually eating the jellybeans to pay for them, and that's what we are trying to do with this system.

Wouldn't it be nice if the Division could be proactive rather than reactive? I know that all the stories that make the headlines in the paper about people who get a zillion dollars behind on their premium or whatever it is, which are extreme cases, but wouldn't it be nice if say that employer might be paying weekly, and they didn't make that weekly payment and the next week we could call them up and find out why, rather than have to wait a quarter or two quarters until the amount of payment got so large that it might be threatening to the business.

- - -

Wouldn't it also be nice if we could get some of these payments from some of these employers so we could invest it earlier. If we could invest it earlier and raise our returns, that might mean that we would need less money from you employers because we are getting more money from our investments, and that could have a positive impact on your rates.

Section 14 of the tax liability section is what's going to help us to try to accomplish all of these things. Basically there's two parts to this, the first one is we are going to assign each employer a tax liability rating, credit rating; it's never been done by the Division.

We have always treated employers the same, whether they are good credit risks or bad credit risks, and we are actually at this point sort of reaping the fruits of that, of treating the employers the same. There is a lot of you out there that might be working with receivables in your own company. Think of how you treat good credit risks and bad credit risks yourself as an employer for your clients.

We are going to start giving employers credit

- - -

ratings, and those credit ratings will have some indication of how often they pay their premium and what plans they can be in such as deductibles and retros and so forth.

The second one is the Division is going to determine the frequency of the premium deposits. As you are reading this section with the rule if it seems complicated, talk to your CPA's, talk to the people who are doing your payroll, the people who are making your payroll deposits.

These rules that we are trying to institute for workers' comp deposits are very, very similar to the 941 payroll tax deposits. So talk to your accountants, talk to your payroll people. We will go over the rating pretty quickly.

Basically we are talking about an A, B, or C rating for employers. You probably realize we will need to look at things like financial statements and such, but I want to talk to you about this second part, which is sort of more than intangible.

What other factors are we going to be considering? What type of business entity are you? Are you in a business that's in decline? Are you in a

- - -

business that's getting ready to take off? That's a very important factor.

How many years have you been in business? What's your prior management history? Is it one of a lot of losses? What's your prior history with the Fund? Are you someone that starts a company, doesn't pay your workers' comp, shuts it down, starts another company? What's that history that you have with the Fund?

These are some things that we are going to be able to look at now and consider when we give these employers the credit ratings. The other thing I want to point out about the credit rating is if you look at the A and that says it's $100,000, if you are a small employer you are probably thinking there's no way that you are going to give me an A credit rating with a $100,000 limit. I want to point out that that says tax liability not to exceed, so a small employer can have say a $5,000 limit when we start talking about depositing premiums.

So small employers can have good credit ratings with the Division and should have good credit ratings with the Division. As far as these guidelines

- - -

go, this chart will look very familiar to those of you who -- some of you may even do your own payroll, make your own payroll tax deposits, but something that's new for the Division that I want to point out to you is your small employers that have premiums of $500 or less; you just have to pay that one time, you don't have to fill out the quarterly reports, and then at the end of the year you can settle up.

That's going to save you paperwork, that's going to save us paperwork. The reason I have an asterisk beside of this is because that is at the Division's discretion, and as you look down the chart one of the -- I just want to point out to you that the people that have the better credit rating, we are getting our money less frequently from them than the people that have the lower credit rating or higher risk credit rating.

And, again, that doesn't necessarily mean that if someone has a lower credit rating that they are a bad employer, that could be somebody that doesn't have the cash flow to make that quarterly workers' comp payment, and I see somebody back there shaking their head; yeah, you know what I mean.

- - -

You could make that payment if you could make it every week or even every two weeks, but when it comes to the end of that quarter, and it might be a bad time in that business cycle, it's real difficult to write that check. So hopefully with these different various deposit rules we will be able to help you overcome that.

Also, if you are like me, you are probably thinking what happens if I underdeposit? You can flip through those two next flow charts, those are just graphs in the 941 book, and they changed them a little bit to match the workers' comp deposit rules.

What if I don't deposit enough? Well, we do have what's called a safe harbor rule, which that shouldn't be a new term if you are familiar with the IRS or 941 rules. If you deposit within that safe harbor range there's not going to be any penalty, there's not going to be any interest, and if you deposit the remainder by the makeup period there won't be any penalty or interest, but I do want to point out that if your deposit shortfalls are larger than the safe harbor amount or if you don't make the deposits when you are supposed to, you will be subject to

- - -

penalties and interest.

I just wanted to point out a couple of things that came to me as I was reading this rule or Section 14. The first one trying to think of the standpoint if I was doing payroll, if I was an employer, what happens if my deposit is required on a particular day and the bank is closed? We do the same as the feds do, if the bank is closed, it's a bank holiday or whatever reason it's closed, then your deposit is okay if you get it in by the next day.

The last one I want to point out here is this is something that's been in the paper a lot, the IRS is moving towards electronic transfer for payroll taxes and the like; is the Division going to consider doing that? Yes, we are, but we are not going to jump in and do that until we get this deposit down pat and get all the bugs worked out of it. We have to crawl before we can walk, and so that is going to be coming, but we are not going to do that immediately.

Ed Staats is going to talk to you a little bit about what you can expect in the future; before he does I want to reiterate something he said this morning. I know that after these 45 minutes or so of

- - -

comments that you all are experts now in those 61 pages and you know exactly which plan you need to use. Sure. Okay.

For those of you that aren't, and I might even be one of those individuals, we are going to have educational-type sessions that will run the gamut; rate making, there will be a different session on which plan would be the best one for you to choose, and those are going to be coming down the road. So if this seems like we are throwing a lot of this at you at one time, we are, but we are going to have individual educational sessions for you.

MR. STAATS: Thank you, Cheryl. Can everybody hear me? Does anybody remember the ketchup commercial from several years ago, white background on the TV screen, bottle of Hunt's Ketchup turned out upside down like this, ketchup just kind of dropping out real slow --

MEMBER OF THE AUDIENCE: Heinz.

MR. STAATS: It's from Heinz. You are the first person that picked that up. It's Heinz.

MEMBER OF THE AUDIENCE: I'm from Pittsburgh.

MR. STAATS: And if you remember that

- - -

commercial, that's what you can expect on implementation of these types of rules. If you look at Page 60 of your rule, I think it's Section 191 and 2, it talks about our timetable.

That even though over the past several years we have crafted a lot of changes in the Workers' Comp Fund; we have crafted changes in claims management, financial reporting, receivables, management, people skills, upgrading of technology, redesign processes, expansion of the statutory authority to allow us to do these kind of things, the development of a constant vision for the West Virginia workers' compensation system.

These rules just didn't happen. We didn't just sit down one evening and say, okay, now, wouldn't it be nice if we did this? This rule is the result of several years of looking at the best practices in other states in private industry from private insurers. We have taken the best and tried to tailor it to the West Virginia market.

Over the past few years we have put foundation pieces in place to allow us to support this kind of process for our stakeholders, but all of those

- - -

efforts still have not overcome all the obstacles that we face. Those obstacles still include a very critical need for better information such as the field audit process that Cheryl talked about.

A critical need to support a very sophisticated technology system that we have implemented, a critical need to change our existing compliment of human skills to include insurance and risk management skills with people who are willing to do whatever it takes to improve the system, and, finally, a critical need to communicate with the stakeholders and educate with the stakeholders as to the impact of their actions on their rates and on the system.

We can't do this overnight, but the Fund is so much more capable of doing this than it was even six months ago, much rather two years ago. In that commercial you know how to get that ketchup out faster? You have got to use the right tool, and all that tool is is a table knife that you run up in there and you twist it and you remove it and that ketchup will come right out. That's what you're putting in place is the right tools to support this program.

- - -

Every success, though, every solution has its own unique set of problems. If we are successful there will be some additional mischief treated by this rule, some additional challenges to you and to the Fund, for instance -- and this may be occurring right now -- employers will be inundated with proposals from organizations developing loss control programs, offering associations with plans to include administration of the various types of financing programs; employers will have to judge these proposals on a what's in it for me basis.

Who will do the best job for you or your group? What are the services you are going to receive? What reports do you have to file? What kind of criteria do you have to maintain to be part of a group? What's your risk as being part of a group? What are the costs of being part of that group? How does that impact your total investment in loss control?

This rule also requires the exercising of informed skilled judgment by Fund personnel. Failure to do so will create inequities beyond those we are trying to cure. This rule requires adherence to new

- - -

policies and procedures by employers and their representatives as established under the authority of the Performance Council with adequate safeguards built in for review and reversal of any improper judgments.

Failure to develop those safeguards will create additional mischief, but successful implementation can generate significant benefits to the employers and their employees in West Virginia, the most significant of which is the opportunity to share what's going on all across the country.

All across this country there are stories and examples of successes where employers and their employees working together have prevented injuries, have reduced their workers' compensation costs, and have shared the benefits.

The Commissioner told you that we average about 70,000 claims a year. If we can provide a system that encourages the reduction of serious injury claims by 10 percent, 15 percent, 20 percent; what is the impact on your costs? Those kinds of successes are not unusual throughout this country. Our system has never provided the incentives to create those kinds of successes.

- - -

The benefits to this State, to all of us in this room as individuals is a more financially viable workers' compensation system that thereby improves the State's overall financial health.

It is win/win for everybody except those who do not attempt to control and prevent their injuries as under this rule they will be more responsible for paying the cost of insuring their risk. This approach in this rule is not intended to allow the shifting of that risk to other employers within the State.

Exhibit 3, let me bring you back to that; what our original objective is. Create a framework to finance the workers' compensation system in the future and establish incentives to prevent injury occurrences.

We don't have all the answers, this rule doesn't provide all the answers; there are so many issues yet to be resolved, but it is the framework. We think we are going in the right direction. We hope that you will help guide us by providing us input on this direction. We want your input and we are asking for it.

Randy Suter is going to moderate a question

- - -

and answer period for about ten minutes about this presentation and about this rule. If you would confine your questions to that subject. As in the past, we have had several questions about, well, for instance, I have worked real hard and my rates didn't go down as an individual. We will be available to talk to you afterwards, just come to us if you have a specific problem you want to talk about.

MR. SUTER: Hi. I have got a real soft spot in my heart for Wheeling, I started out here out of school about too many years ago, and I have always liked coming back. If it sounds like I'm talking into a tin can, I might be; I have a four-year-old son who has a cold, and his father has one now.

This is not the public comment period, you are going to have an opportunity to get up and make your points known at the conclusion of this question and answer period. If you have serious concerns that you would like to state, that's probably the appropriate time to do that. If you have a rousing endorsement, we wouldn't mind hearing that either.

This is being recorded by a court reporter, so when you get up to ask your question please stand,

- - -

talk loudly so that she can get your name, identify yourself, and proceed to ask your question.

If we can limit it to one question per person, if we run -- you know, if we run overtime or whatever we can come back and talk to some other people individually, but I had a couple of instances where one person will get up and say, well, I have got this six-part question. Let's give everybody a chance, ask a good one and we will see if we can get you an answer.

The last thing I want to tell you preliminarily is there's a survey that you are going to find in there. Please fill it out. We really care about what you think, and that gives us an opportunity to gauge how you feel about this presentation and about the products we would like to offer.

I chased a fellow down in Barboursville the other day, I was chasing him down the hall trying to get the survey off of him, and I felt a little like a dog on the fellow's pants leg and he was trying to get rid of me. So, please; it's embarrassing. Don't let me do that.

Who will be the first for questions? Come

- - -

on, there's got to be a couple out there, it just takes a little while to get the hand up. Tough crowd. No questions at all about everything you have just heard? How is this going to affect me? Why do we have these different plans? I can ramble on a little bit, I don't think you want to hear that right now. Any questions at all?

MR. MERRITT: How many auditors do you have in the Fund?

MR. SUTER: Please stand and state your name.

MR. MERRITT: Doug Merritt, Wheeling Pittsburgh Steel.

MR. SUTER: Doug Maron?

MR. MERRITT: Merritt.

MR. SUTER: Wheeling-Pittsburgh Steel.

MR. MERRITT: How many auditors do you currently have at the Fund?

MR. SUTER: I think that would be an appropriate question for Cheryl.

MS. RANSON: We have got six.

MR. SUTER: There are six field auditors at the Fund. The program that she was discussing was contracting with a variety of public accounting and

rule, as Ed advised the staff, incorporating all the comments as appropriate.

The Finance Committee will look at that. We will make changes or not as we see fit. We will make a recommendation to the full council and our target date is that the full council will act on this rule by November 1st.

COMMISSIONER RICHARDSON: Chris? Yes, sir?

MR. CLARK: Is there an address for public comment to the Performance Council?

COMMISSIONER RICHARDSON: Yes. It is on the regulation if you have a copy of the regulations, and the address is in the lower right-hand corner just above my signature. That address is Randall B. Suter, Counsel -- we now get to put the face with a name -- Legal Services Division, Post Office Box 3922, Charleston, 25339-3922.

Chris, any comments? Fred?

COMMISSIONER TUCKER: No, sir.

COMMISSIONER RICHARDSON: Dick? Everette?

COMMISSIONER SULLIVAN: No.

COMMISSIONER RICHARDSON: Anything else from the public today to go to the order?

MR. DeANGELIS: For those of you who did not get copies, the box will be back here. Somebody will be back here to pass them out.

MR. SUTER: I will go get more if anyone doesn't get them. Mr. Clark, did you have something?

MR. CLARK: My question was is that the address that gets to the Performance Council? I understand that is the public comment address, but how does input go to the Performance Council, that same address?

COMMISSIONER RICHARDSON: Yes. You are talking about on this regulation?

MR. CLARK: The gentleman that just spoke said that they were going to the Performance Council and discuss comments --

COMMISSIONER RICHARDSON: Yes, yes.

MR. CLARK: That is where they will be directed?

COMMISSIONER RICHARDSON: That is correct.

I want to once again reiterate how much we appreciate your attendance today. I hope that you have found this informative. I hope that this program, this

initiative is helpful for the businesses of Parkersburg and the mid-Ohio Valley community.

Thank you so much for being here.

(WHEREUPON, the public hearing was concluded at 12:35 p.m.)

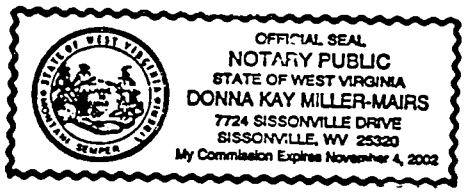
REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to-wit:

I, Donna Kay Miller-Mairs, 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 as set forth in the caption hereof.

Given under my hand this 25th day of September, 1996.

Donna Kay Miller-Mairs
Certified Court Reporter



THE WORKERS' COMPENSATION DIVISION

RE: RISK MANAGMENT PROGRAM

TRANSCRIPT of PUBLIC HEARING held at West Virginia University, Bennett Tower, Evansdale Campus, Morgantown, West Virginia, on the 19th day of September, 1996.

APPEARANCES: ANDREW RICHARDSON, Commissioner;

RICHARD HUMPHREYS, Member, Performance Council;

EVERETT SULLIVAN, Member, Performance Council;

CHRIS JARRETT, Member, Performance Council;

FRED TUCKER, Member, Performance Council;

THAD EPPS, Member, Performance Council;

RANDY SUTER, ESQUIRE
Legal Staff, Workers' Compensation;

ED STAATS, Chief Financial Officer, Workers' Compensation;

CHRIS DEANGLELIS, Workers' Compensation;

AMY GRAVES, Workers' Compensation;

CHERYL RANSON, Workers' Compensation.

BACHMAN COURT REPORTING
ROUTE 7, BOX 40 A
FAIRMONT, WEST VIRGINIA 26554
304-366-3816

COMMISSIONER RICHARDSON: Good morning!

AUDIENCE: Good morning!

COMMISSIONER RICHARDSON: When you're - - - when you're in a school you start the meeting like you would a class, right?

My name's Andy Richardson. I'm the Commissioner of the West Virginia Bureau of Employment Programs and I want to welcome all of you here today to Bennett Tower for the Fourth (4th) of eight (8) public hearings regarding changes in the rate making and underwriting system of the West Virginia Workers' Compensation Program.

I was - - - I was telling some of the people on the Performance Council earlier, I've got fond - - - well, generally fond memories of Towers Dormitory. This happens to be where I met my wife and we were friends before we began dating and so I always have a lot of good memories when I come into the Towers because it's where one of the more significant events of my life occurred when I met her.

Where's Amy? Amy is going to - - - she is one of the presenters today. I want you to stand up, Amy. I want everybody to get a good look at you. Amy picked - - - this is a lesson in bad timing because Amy will be reminded several times this morning that she is a graduate of Purdue. Okay. And there's fifty-one (51) weeks in this calendar year when

that wouldn't have mattered a bit on this campus but today we will - - - we will constantly remind her that she is a Boilermaker.

MR. TUCKER: You ought to be careful. She might remind us Sunday.

COMMISSIONER RICHARDSON: Yeah, that's right, but I have - - - I have faith in the old Gold and Blue.

MR. TUCKER: I do too, but you got to have that back up.

COMMISSIONER RICHARDSON: I'd like to again welcome everyone here this morning. This is an important project that we have underway. West Virginia's Workers' Compensation system has undertaken a number of very vital reforms over the past few years. This is, in many ways, the most profound change that we have undertaken in the Workers' Compensation system.

In 1995 the West Virginia Workers' Compensation law had extensive amendments enacted by the West Virginia Legislature. That's been very well publicized throughout the State over the past several years. One of the provisions that has not garnered a great deal of attention is the provision that we're here talking about today.

A key provision was a change to Chapter Twenty-three (23), Article Two (2), Section Four (4) of the West Virginia

Code that totally rewrote how you price Workers' Compensation insurance in the State of West Virginia.

Now, traditionally, there have been two (2) kinds of insurance available to West Virginia's employers, all through the State Workers' Compensation Fund, both from the State Workers' Compensation Fund.

One is what we would call guaranteed cost and that is what the vast majority of employers in the State have; that is subscription to the Workers' Compensation Fund. You pay a premium and the Workers' Compensation Fund pays first dollar coverage on any costs associated with a work-related injury.

The second type of coverage is individual employer self-insurance. And if you are of significant enough size, significant enough financial capacity, significant enough safety programs in place, you can pay your own claims, if you will, still regulated and overseen by the Workers' Compensation Division but you are self-insured for Workers' Comp. coverage.

Now, ah - - - there are a number of problems with that current design. It has limited flexibility. It pulls together all of the different kinds of risks so that if a company's costs are exorbitant and have actually been high in the number and costs of the Workers' Comp. claims, it actually pulls down the other kinds of employers in that classification

and increases their costs.

So the West Virginia Legislature directed us to make some fundamental in the rate making and underwriting system. Now to do that there are basically four (4) basic components to accomplishing that task. The first has to do with field auditing. That is, in essence, risk assessment; going out and determining the amount of payroll that an employer has; ascertaining the type of risks that they have and being sure that we accurately reflect that in whatever type of rate that employer has.

Second, safety and accident prevention. West Virginia currently receives about seventy thousand (70,000) - - - seventy thousand (70,000) Workers' Compensation claims each year. Ah, that's far too many. That is - - - that is - - - to put that in context, we have an employment force - - - civilian labor force of about seven hundred thousand (700,000) people so seventy thousand (70,000) claims - - - now, many and most of those are no lost time, medical benefits only type claims, but the fact remains that there are seventy thousand (70,000) compensable injuries of one type or another every year and an aggressive safety initiative and accident prevention initiative involving employers, workers and the Workers' Compensation program can lead toward - - - toward significant reductions in those types of accidents.

The third category has to do with rate making and underwriting and that is really the core of what we're here about today.

And the fourth area is collections and accounts receivables and management and, again, how - - - what kind of a risk you are has an inherent bearing on how we should be managing the accounts receivable and the collection cycle and things of that nature.

Now what we'd like to do this morning is share with you some of the ideas that the program is working on in this particular area. What you will learn about is a Workers' Compensation program that involves a total change in our approach to pricing this business and this is an insurance, right? This is, in essence this is an insurance. If any of you do business across the border - - - how many of you may actually have some work over in Pennsylvania? Now do you have a private carrier over there or are you in the Pennsylvania Fund?

AUDIENCE MEMBER: We're in the Pennsylvania Fund.

MR. WILSON: I'm not sure. I just started this week, so I'm not sure.

COMMISSIONER RICHARDSON: Okay. Well the point is that in many states, you know, there's both the availability

of a Workers' Compensation Fund of some sort but also a private insurance carrier market and if you look at the private market, they often have a variety of kinds of products and what we're trying to move toward is a variety of kinds of products, instead of just guaranteed costs and individual self-insurance.

Some of the things that you'll be hearing about today is an assigned risk pool to segregate the bad risks and implicitly help the good risks by doing that. You'll hear about retrospective rating for both individual employers and groups of employers and that is, in essence, a settle up at the end of the year type of concept where, if you've estimated your costs as higher than what they actually were, you might get a rebate from the program; conversely, if you've estimated them lower than what they were, you'd owe us money at the end of the year.

Another program would be deductibles where, just like with automobile insurance, if I don't have a deductible and you've got the exact same kind of car but you've got a two hundred and fifty dollar ($250.00) deductible, guess what, your insurance rate's considerably lower than mine is, okay?

So those are some of the types of things that you're going to be hearing about today. Now how did we get here? I drove up I-79. No. How we got here is this. The

Compensation Program's Performance Council and the staff have worked significantly - - - well, let me say with a significant level of creativity and energy over the past several months to develop a new approach to rate making and underwriting and those plans have now been articulated in the Regulations that you have in front of you. Now those Regulations are subject to public hearings and what we plan to do today is two (2) things: We - - - first of all, we plan to provide a little education, a little bit of information about what the plan is and where we're going with it and secondly, we want to invite you to make public comment. So if you want to comment and you did not signify as such next to your name when you signed in, I want you to do that sometime during the hearing today because we're going to collect the lists in a little bit and I'm going to invite folks to make public comment and invite folks to entertain questions from the Council.

You also have on the front page of the Regulations an address down in the lower right corner that tells you the - - - hand me one of those, Chris. I'm talking about this particular document right here and right down here (so indicating on document) in this corner is an address of Randall Suter and if you'll notice, the last day for written comments is October 8, 1996 at five o'clock (5:00) p.m. We have a sixty (60) day comment period and the Regulations went

out for comment in August, so if you don't provide written testimony today, please consider giving us your thoughts and ideas in the way of feedback at that time.

I'd like to introduce the members of the Compensation Program's Performance Council that are here with us this morning. Ah - - - down at my far right is Richard Humphreys, recently retired from the Institute of Labor Studies here in Morgantown. He represents the interests of workers generally and I'll - - - you'll understand what I mean by that here in just a second.

Next to him is Fred Tucker. Fred represents the interests of coal miners on the Compensation Program's Performance Council. Everett Sullivan. the gentleman right here to my immediate right, represents the interests of construction trade workers.

Now Mr. Tucker and Mr. Sullivan were appointed by the Governor to the Council through a nomination process from the particular labor union type of interest that they represent so - - - but Mr. Humphreys is an at-large appointment and what we have are four (4) representatives that represent the interests of workers, four (4) representatives that represent the interests of employers and myself, sort of the man in the middle or maybe the monkey in the middle that kind of gives us a nine (9) member Board with a variety of perspectives.

To my far left a nominee from the Chamber of Commerce is Chris Jarrett with West Virginia Water Company and then Thad Epps, the representative from the manufacturers.

With that let me also spend just a moment introducing the approach that will be taken this morning. The educational session will be introduced and led by Ed Staats, our Chief Financial Officer for the Workers' Compensation Division. You will then hear individual presentations from Chris DeAngelis, Amy Graves, Cheryl Ranson and Randy Suter and all these folks have been the energy and the creativity behind the development of this plan.

We'll have a question and answer period. Depending on the time line we'll either take a brief break or move right into the - - - the opportunity for public testimony from each of you so once again I want to thank you for being here. This is an extremely important initiative that we have underway. We're proud that you've come to be with us today and we look forward to your thoughts and the dialogue that we're going to have in the next several minutes. Thank you.

MR. STAATS: Thank you, Commissioner. Can everybody hear me? Do I need a mike? How's that? Any better?

We want to welcome you to this public hearing on a plan to finance Workers' Compensation in the future. This

financing plan, known as Series Nine (9) Risk Management, you should have a copy on your desk in front of you. It's about sixty-four (64) pages long. It represents another milestone along the road that we've chosen to try to change Workers' Compensation in the State of West Virginia.

That direction that we have established has generated a significant amount of interest. Most of you should have received this little brochure on risk management in the mail. We hope you did. When we mailed it, we received I don't know how many hundreds of telephone calls about this concept and I'd like to read to you some of those calls and the impact that this concept is beginning to have.

From a small company in Weirton, the Controller called and said the people in his office cheered when they passed around that brochure. They were complimentary about the proposed changes and they had already seen some positive changes coming out of our claims management efforts. They were excited about the retro-concepts because they had instituted a risk management program and yet their experience modification factors had not reflected the impact of that program. They suggested that we not require a deposit for companies with a good history with the Fund and good credit ratings.

The Bavarian Inn in Shepherdstown, the Manager there

called. They wanted a retro and they wanted to know how they could sign up for one. They were very excited that somebody is now looking out for people that don't have claims.

A little cabinet shop, their premiums had gone up and they'd been working hard to control their losses. They wanted to see multiple classes. They were concerned that someone would keep this rule from going through because they felt like it was for the little guy.

Exhibits Two (2) and Three (3) of your presentation, hand-out, reflect the objectives that we're trying to achieve but the objective that most reflects the underlying strategy of that effort is in Exhibit Three (3) that begins "Create a framework". This strategy is a back to basics, fundamental recognition that the financial ills of Workers' Compensation can be corrected by employers and their employees if the system provides methods for those groups to directly influence Workers' Compensation rates.

This financing plan fixes the responsibility for rates with the employer and provides rewards if prevention of workplace injuries and illnesses occurs and is reflected in a reduction in injuries. For such a strategy to be successful requires full and complete disclosure to you of all policies, methods, practices, procedures and cost drivers that are impacting your rates. No more hocus-pocus in rate making. It

is our intention to provide you with this disclosure as we move forward.

A detailed presentation of that sixty (60) some odd page rule might take us about three (3) weeks. My risk management team only intends to hit the high spots of the concepts that are included in that rule.

First of all, let me introduce some of the - - - or the members of that Risk Management Team who are presenting today. Cheryl Ranson is a Certified Public Accountant. She has a degree in mathematics and physics and science from WVU and a degree in accounting from the University of Charleston. She has six (6) years of private sector accounting and management experience along with eight (8) years of experience as an instructor in mathematics and physics.

Amy Graves, who is not wearing black and gold today, is a graduate of Purdue with an MS in management and a graduate of the University of Michigan with a BA in economics. She has five (5) years experience in life, health and property and casualty. both with CNA and Met Life as well as three (3) years experience as an Account Analysis for Travelers where her responsibilities involved pricing and marketing Workers' Compensation coverages.

Randy Suter, from our Legal Division is a 1978 graduate of the WVU College of Law. He has experience in

private practice as well as sixteen (16) years experience with various agencies of the State.

And finally, Chris DeAngelis. Chris has seven (7) years experience in property and casualty insurance. He has a BA in finance and actuarial science from the University of Illinois. His experience includes pricing and reserving of Workers' Compensation coverage. He's worked with such companies as AllState and Kempher. He is pursuing his complete actuarial designation and he's going to talk about rate making.

MR. DeANGELIS: Thank you, Ed. I'm going to try and flip my own slides here, so if you can't here me, why don't you raise your hand and I'll try and speak up, but at this point can everybody hear me back there? Okay.

As the Commissioner said, there are many facets to the project that we're working on. When we talk about rate making, we'll really referring to the formulas, the methods, the models, all those assumptions and things that go into calculating not only the classification base rate, but also each individual employer's rates.

I'm sure, for many of you, if you've ever inquired as to how your rates are calculated, feel like the guy in the picture here where you're just kind of left hanging. You're not really sure how you got there. You're not sure how you're

going to get it down and - - - we're trying to change that here and when talking about the proposed rule, it is really these guidelines that give us the latitude to design some of the changes that we're going to talk about today with respect to the models and methods used in determining the rates.

As Ed said, it's really a comprehensive - - - it's a really big binder of stuff that we've put together, technical concepts in there. It would take a great deal of time to go through all of it, so today, I'm really going to focus on some of the high level objectives that we - - - we came in with and in the next six (6) months as we go forward with implementation, we're going to have some educational sessions to be sure that all of you know about, where we're going to get in more detail as to these models, some of the technical concepts and we're going to spend a great deal more time about some of the details that underlie the things that we're talking about today.

The four (4) main objectives that I want to focus on are, first of all, in the new system, the industry and the classification to create the costs are going to pay for the costs.

Second objective, we wanted to make the individual employer's experience more reflective in the rates that they pay.

Third is we wanted to have a model that more clearly illustrates what are the cost drivers? How is the rate being calculated? What can I do to better improve the rates that I pay?

And, finally, we wanted to create a model that had the flexibility, not only to adapt to changes in the work comp environment in West Virginia, but also support new products that are maybe more suited to some of your own industries, some of your own employment styles and they're going to benefit you, the employer.

As I said, it's the rule that really afforded us the ability to design some of the things that we're talking about today, but it's really some initiative that started a couple of years ago that serves as the foundation of our ability to implement these standards. And that is, a couple of systems that have been implemented over the last couple of years at the Division to really allow us to generate a lot more data and have a lot more capacity to analysis the data so that we can have the flexibility and we can create these models.

Those systems are the MIRA system which is a royal class reserving system which generates over a hundred and sixty some odd variables. It allows us to capture different information to be used in our analysis.

The second one is the WCIS system which is really a

work count data base which - - - it pulls all the data, allows us to retrieve the data we want and it gives the flexibility in the analysis to get the kinds of things that we want in the format that we want.

As I said though, the first objective is to really make the classification system a little bit more equitable and really what that boils down to is this. If I'm a widget maker in class X, the cost of my classification are going to pay - - - are going to be relatively equivalent to the claims and the costs that are presented from my industry. Some of the things that allow us to do this are - - - as is shown on Exhibit Five (5), is this data capability. This increased data capacity really allows us to have formulas that are more reflective of what's happening within each individual industry. Not only that, but this increased data capacity also allows us to have several different approaches to analyzing information and what that does, it gives us the opportunity to validate our analysis. We have some checks and balances in place now to make sure that these projections are reasonable and I think it's going to really add to a lot more effective and accurate projections of the classification base rates.

Two (2) other key components; one (1) which will be talked about later with Cheryl is the field audit. The field audit is critical because what's important in that

classification is that you're basing it on that industry's experience. If you have employers who are not classified correctly, their experience is going to be blended in with an industry that's not reflective of the kinds of services that they provide, so in the field audit we are going to try and clean up the classifications to make sure that all the groups and all the employers are - - - are classified correctly in their experience into the right classification in determining those rates.

There will be other special projects that we do as we go along to try and look at some of the different things that are happening within the classifications within each individual - - - within the industries just to kind of get a flavor as to what's going in a sense as to what some of the directions of thoughts are happening and maybe what are some of the underlying impacts that we can start to address to maybe reduce those fallacies.

Our second objective was to make the individual employer's rates more responsive to their experience. As you can see on Exhibit Six (6) I list some of the - - - some of the details about this but what it boils down to is that I'm actually going to look at - - - or the model is actually going to look at what kind of options can we expect from you as an employer based on the rates from your classification and based

on things called development patterns.

Well what it does is it allows you to look at what we expected versus what actually came in for you as the employer. So if your losses are less than what we expected then your rate is going to be less than the base rate for your classification. This also allows us to adjust for - - - since it's based on the class rate, if the class rate is too high or too low, it's also going to adjust the base rate to reflect some of those changes as well.

So it's going to be more responsive to the different kinds of losses that you are experiencing but also, if the base rate by chance is incorrect and it is too high, it's going to allow that to lower your rate or if it's too low, it's going to also allow that to increase the rate.

The way we can do this, again, starts with the ability to have more data capacity. Because of that we have models and formulas that are more reflective of how do we create a - - - how do we create variables that can really respond to some of the things that are happening to an individual and it gives us some flexibility to kind of vary by industry, how do we want to approach the employers in this industry? How many years of claims experience do we want to use? How much weight do we want to give to you the employer, your own experience? How much do we want to limit large losses? If you're in an

industry where you have, not a lot of claims but they're pretty high severity, you know, we may want to limit the losses differently than if you're somebody that is more of a clerical where there's very few claims and they're very low severity. So we have some flexibility there to make the model more reflective of you, the employer, and the kind of things that are happening there.

The third objective is to create a formula and a model that can be communicated so you, the employer, if you wanted to know, one (1) how the costs are calculated, how the claims - - - how the Workers' Comp. premiums are calculated and also what piece of that can I control, what piece of that can I reduce by taking some initiatives on my own.

Some of the different things that we want to try and do is we want to isolate different components that make up the premiums and list those out so that you can see what percentage of those really reflect your rate, the bottom line. Which piece is the claim costs. Which piece is due to really expenses in just administering the claims program and what we hope to do is - - - is have some kind of sheet that can really show that. again. if I'm the widget maker in the previous example and my - - - my actual losses were lower than my expected, well, my rate would have been ten thousand dollars ($10,000.00) initially but I'm getting a fifteen hundred

dollar ($1500.00) break because I had better expected losses. And then I also have to pay some money for the administrative expenses and we're also trying to reduce the deficit so I can pay a little bit to help out there too and my total rate - - - there it is right there. So I know what the components are and I know, well, because I reduced my losses I was able to bring that ten thousand (10,000) down to eighty-five hundred (8500) and, you know, maybe I can't change as much the administrative stuff as the deduction costs, but I'm doing a good job and I'm getting a lower cost.

We want you to be able to know these things because we feel when you start to realize that you can improve that people are going to make more of an effort to actually reduce claims.

Finally, our fourth objective was to really make a model that's more flexible and can adapt to some of the changes in the environment. As Ed had mentioned, I'm sure some of you have felt in the past, that creative rates have been kind of a hocus-pocus and we feel that this new rule and the new system and methodology is going to change a lot of that.

As Commissioner Richardson had explained, these folks who are sitting as the Performance Council are really a diverse group of folks who represent industry, who represent

labor and - - - and really appear on your behalf. They're going to be the ones that are going to make a lot of the determinations and - - - and really have great input into some of the assumptions that go into this model, so we believe that having them there and making these decisions is kind of - - - is out in the open and they're working on behalf of you and in your best interest, so we feel that it allows for a framework that is quite a bit more accurate and it can communicate as well some of the things that are happening.

As well, because of the flexibility and adaptability we also needed a model that could support the new alternative rating plans and as Ed had mentioned as well, some of these plans are really more suited to fit your needs and really more reflective of the kind of programs that you may want to get involved because they're going to benefit you, the employer.

Here to talk about some of those plans is Amy, but I'm just going to briefly go over them. They are the Group Retro, the Individual Retro, the Deductible and, as I said, Amy's going to talk about some of these programs, give you a little better insight as to what they really mean and what they're all about.

MS. GRAVES: Thanks. As Chris discussed with you there are going to be several alternative rating plans that are going to be either offered or mandated

to employers by the Division. And just in - - - kind of to defend myself, my other favorite colors are maize and blue and it's a little different than old gold, but it's pretty darn close.

The alternative rating plans are Deductible rating plan, Retrospective both for individual employers as well as group and then there's something else called the Adverse Risk plan. These are all referenced in the Rule that you have in front of you in Sections Nine (9) through Thirteen (13) and I'm going to talk to you about them today.

Basically, I'm thinking out there. there are probably three (3) main questions that you might have about these plans. One is, what are they? Which one is best for me?

The second one might be, okay, now that I know maybe which one is best for me, how do I know how I qualify for - - - be covered under one of these plans and then finally, once I'm covered by one of these plans, how, after a certain period of time, do I know if I can continue to be eligible for coverage under one of these plans. And those are the questions that I'm going to answer today.

Just to sort of set the stage, guaranteed costs which is now under the regular Fund and self-insurance will continue to be the standard plan offered by the Division, so there's no major changes there.

But the other rating plan, I'm going to start off by talking to you about the Deductible Plan. As the Commissioner said, the Deductible Plan here is really not much different than any other Deductible Plan you might have either for your personal automobile, or your health insurance, household insurance. Basically, in exchange for assuming a certain portion of your claims dollars, you receive a reduction in premiums.

Now in Workers' Compensation coverage, obviously, the deductible is probably going to be a little bit higher than fifty dollars ($50.00), a hundred dollars ($100.00). We're going to give you several options and the premium will be reduced based on the type of industry that you are in and obviously, based on the size of the deductible. The larger the deductible, the greater the premium deduction.

Basically, this is very similar to a self-insurance as a form of self-insurance and something that can be very helpful to small employers who, under the current plan, can not be eligible for self-insurance. It gives them an opportunity to have an impact on their own premiums.

The other plan is the Individual Retrospective Plan. As the Commissioner mentioned, it's a plan - - - a form of recouping premiums after a certain coverage period. Basically, you would be eligible for an Individual Retro Plan

based on your premium size or based on your experience. In exchange for the Individual Retro Plan you would pay at the very beginning some standard premium based on your base rate for your particular industry. At the end of a specified coverage period, however, if your losses were less than expected you would receive a premium reduction at the end of the specified coverage period.

Conversely, however, if your losses were greater than expected during that coverage period, you would then be assessed an additional premium at the end of that period. This coverage is applicable or probably preferable for those employers who anticipate that over the course of the coverage period, they will have tremendous reductions in their claims dollars, that they expect something to happen in a very short time period that would reduce their claims dollars.

However, as I said earlier, these plans can both be offered to employers or they can be mandated. An instance where a Retro Plan might be mandated to an employer, is if an employer consistently had worse than expected claims in their industry and that might be an example where an Individual Retro Plan might be mandated for that employer. We'll talk a little bit about that mandate process a little bit later.

The Group Retrospective Rating Plan is really no different in terms of how premium adjustments occur than the

Individual Retro Plan. The only difference here is that it's offered to a group of employers. It can't be just any group. It has to be a group of employers that are in a similar industry or similar classifications. There would probably be a couple of groups that would be offered through the Division based on the number of industries that have a demand for this type of program.

Typically employers that are eligible for a Group Retro Plan would be members of a sponsoring organization that has been formed, for the most part, to assist in reducing claims costs and managing safety for members of the group.

One of the main benefits of this plan is that it allows smaller employers to group together and therefore have more of an impact on their own individual premium and how that premium is calculated.

The final plan is what we're calling the Adverse Risk Plan. Obviously, by the name, you can tell it's not something everyone's going to want to sign up for. This plan has been designed to really target those employers who have had substandard levels of performance. By substandard, I mean they either have not been in compliance with the rules and regulations set forth in the Rule in front of you or they have consistently had much worse than expected losses.

In exchange for the substandard performance, employers

would be mandated in the Adverse Risk Plan. The reasons for the mandate vary and they are listed in the Rule in front of you in Section Twelve (12). The surcharge that would be assessed for employers who are mandated in this plan would vary depending on the reasons why the employer had been placed in the plan. There will be a range of surcharges, ranging from say anywhere from ten (10) to thirty (30) or so percent. That's something that, while we're in this implementation level, we're still determining what the exact surcharge percentage will be.

The placement in this plan, obviously, is not something that anyone on the Performance Council or within the Division is going to take lightly. Any placements in this plan would have to be approved and presented to the Performance Council.

So that's a little bit about the alternative rating plans, what are they, which one is best for me. I hope you have a little bit more of an understanding.

One of the things that is also on the table in front of you is a survey that says "please respond" and one of the things we ask is if you feel you have somewhat of an understanding of this plan or maybe have an initial gut feel as to which plan might interest you, please do us a favor and circle those and it'll give us kind of an idea as to what some

of the demand is out there for some of these plans.

You're not going to be pigeon-holed into any one of these plans, it's just an overall survey.

So on to the second question. Okay. I know a little bit more about these plans. How do I sign up? I want to be an Individual Retro Plan. Basically, to qualify for one of these plans, there'll be an application process. You would be submitted an application. You fill out this application indicating things such as what is your business operation, a little bit about some of your financials, have you got a good standing, those types of things.

That would vary depending on the type of the plan that you are qualifying for. For example, a very large deductible program might ask for more financial information from you depending upon the size of the deductible.

The other thing that would happen after you submitted your application, it would then be reviewed by a representative within the Division. what we would call an underwriter, he would look at the information that you provided to determine if you would be eligible for an Individual Retro or a Deductible. Once that decision has been made, the underwriter will communicate that back to you and provide you with some sort of written documentation as to which plan are you covered under and what would be the

coverage period.

One of the things that is under consideration is the offering of a variety of coverage periods. Currently, right now, the coverage period, as you know, runs throughout, starting on July 1 and runs through June 30th.

The other thing is the mandate process. This is going to work somewhat similarly to the eligibility or the election process. The only difference is that the underwriter or the Division representative would say this is the plan for you and that would be based on a very thorough review of the application information.

So on to the last question. Okay. Say I'm in a Deductible Plan. I've been covered by - - - under a Deductible Plan for, oh, about twelve (12) months now. Am I still eligible? Well, what's going to happen is at the end of that particular coverage period, there will be a series of reviews that will be conducted by the Division. One is a scheduled review and the other is more of an ad hoc review.

The scheduled review, as I said, would happen on a scheduled basis typically at the end of a coverage period whereby the underwriter would then look at information on an application. You may be requested to submit an additional application or additional, say, financial information as well as perhaps any additional claims information to see how your

experience has been throughout the year. If any changes have occurred during that period, then there may be a need to reassign the employer into a different rating plan but that would not happen until such time as the coverage period had expired.

The other review would be more of an ad hoc review. This review would be something that would be conducted during the coverage period, not necessarily at the very end, by a Division representative. For example, let's say, throughout the coverage period there's been a claim that suggests that the employer is doing something different than was originally indicated on the application. At that time the individual representative would mention that to the underwriter responsible for managing that specific employer's account and say "I notice a little discrepancy there. Maybe we should check something out." and at that time the underwriter would make a decision to relook at the account, perhaps there's a need for another classification code and that would be sometime at which the underwriter would perhaps request that a field audit be conducted to assess the classification to determine if it was the right classification. Cheryl's going to talk a little bit about that later.

Another ad hoc review might occur after such a point where an employer contacts their Division representative and

says, "hey, I'm going into a different business" or "I purchased a business" or let's say I moved my operation, I've changed my location. At that time the underwriter would also look over the account and make any necessary changes.

Basically any review and monitoring process is shared with - - - the responsibility for that process is shared by both the Division and the employer. It shouldn't be a one way street. We want to make sure that everyone has involvement in managing their own account.

So those are the three (3) answers - - - answers to some of the three (3) major questions. I hope I've clarified some of these issues for you. Cheryl's going to now talk to you about the field auditing process and some of the credit management policies and procedures that help support these plans.

MS. RANSON: Thanks, Amy. I have to say I have a soft spot in my heart for Morgantown. Last night when I drove in I went by a couple of my old stomping grounds on McLane Avenue and I can't believe I was ever that young as I go back and drive by today or I used to live in an apartment behind old Mountaineer Field. six-thirty (6:30) in the morning the day of the Penn State game, Let's Go Mountaineers and then the band starts practicing and I just have a lot of fond memories of Morgantown.

What I am going to talk to you today is more what I consider to be common sense than anything else and it's something that's very critical to the school.

When we were conducting one phase of the pilot audit program, we found that approximately one-third of the employers that we were looking at were misclassified - - - one-third and that had very immediate ramifications and impact upon our rate making process. For example, if we have these three (3) gentlemen over here, there'll be one of them that would be misclassified.

Now you're misclassified. That means if you - - - let's say that you're in a low risk business and this gentleman is in a high risk business and he's classified with you, is that what you want? No. We don't.

The other side of the coin, this gentleman is in a high risk business, does he not want more premium, does he not want this gentleman to be in with him and pay premiums in his class, sure.

So that's going to be a major component of getting our rate making to be more fair and equitable and that's what we're going to try to do with this process. We're going to be sending out and doing several field audits.

Here's some classification problems that could possibly happen. For example, we have loggers who could be

classified as truckers. That might make sense. Don't loggers drive trucks with logs on them? Sure. Is that the same risk as someone driving a truck of furniture around? I don't know. We might have to think about that.

We have glass manufacturers classified as advertisers. How could that happen? What - - - you're around Morgantown. What are all these signs made of that you see hanging? Right. Neon light. And I would say to you that that is probably not the same risk as advertisers. Anybody here that is in engineering or works with any of that probably could tell you that too.

High risk occupations classified as clerical due to subcontracting. That happens all the time. Generally we think of subcontractors, you know, subcontracting services as more along the clerical line but that's not the way it is now days.

And then the last one, salesmen classified as manufacturers. We have companies that start out as manufacturers and then maybe ten (10) years down the road they give that up and they go in sales, but they don't contact the Fund so they're paying at the manufacturing rate. Which rate do you think is higher, manufacturing or sales? So they're paying at a higher rate.

So some of this, the Fund will take ownership of.

Some of this the employers need to take ownership of but we're not going to look at that as well in the past, we're going to look at the future and what are we going to do about it. What we're going to do is we're going to go out and audit employers. Why are we going to do this? Well, just like I said, we want to make sure that we can identify the employers' true risks. We want to make sure that we know what these employers are doing and then that way we can assess our rates more fairly and more equitably. We want to make sure that employers are reporting payroll correctly. Do you and your friends that own businesses, do you want to be the only people in your class that are reporting payroll correctly? Again, probably not. So we want to make sure that employers are reporting payroll correctly, not just the appropriate numbers but in the right class when they're reporting their payroll.

We also want to identify possible candidates for safety and loss control. We want to look and see which employers out there are accidents waiting to happen. You know, some employers have been lucky. Other employers run very safe shops. So we're going to do preliminary safety survey type things and then pass those on. You're going to hear a lot more about safety and loss control in the months to come with Workers' Comp. It's going to be a major way that you are going to reduce your costs and reduce our costs.

Who are we going to audit? Well, one of the good things about this computer system that Chris was talking about is we're getting more information now, more data than we've ever had before about employers, about the people that we're covering with this insurance and one of the items that we found out this year was that approximately forty-five hundred (4500) employers out of forty thousand (40,000) employers make up about eighty-five percent (85%) of our premiums.

So just think, if we can go out and audit these employers and get them in the right class, that's going to have a dramatic effect on our premiums and getting out premiums where we want them to be as far as being fair.

We're also going to look at some classes that have a history of under reporting or history of default or a history of misclassification.

We are also going to audit people based on requests. The one request that I want to point out is we do audit people based on request from employers. I don't know how many people are here that I've talked to on the telephone. I think some are. I can't tell you how many employers have told me that they know of XYZ Company that's operating, and they're not paying Workers' Comp. and we can't compete with them and vice versa. You need to contact our - - - or contact Workers' Comp. and let them know so that we can go out and audit these

people and get their premium.

What are we going to do in the field audit? Well, we're going to look at your premium. We're going to look and see if you're in the right class. We've got to go out to you so that we can do that. Sometimes you can look in the yellow pages, sometimes you can determine things over the phone, but when you get into some complicated situation, you have to go out and look at your equipment, look and see what you're about to make sure you're classified correctly.

And we will be doing, as I said before, our preliminary safety review. When we were first talking about this, I was probably a lot like you all, you're saying how could the Division do this, forty-five hundred (4500) audits. You don't have the staffing for it and that's correct. What we're going to do is through the RFQ Process, we're going to contract with certified public accountants, public accountants, other qualified individuals to go out and perform these audits on behalf of the Division. And they'll be starting approximately January 19th, '97 and we hope to complete the first go round of that in eighteen (18) months and then after that we will have regular scheduled audits and then, as I said before, when people request. Amy mentioned the underwriters might request an audit and then we would perform those.

And where are they going to be? Again, it will be on-site. It will be at the employer's site. That is the only way that we can make sure that these employers are classified correctly is if we go out to your site to do these audits.

Okay. Shifting gear a little bit. I'm now going to talk about Section Fourteen (14) in the Rule which really has to do with - - - it's called tax liability or credit rating but before we get into that, I'd like you to ask yourself some of these questions. The first one, wouldn't it be nice if the people - - - that we could shift those premiums from the people who are willing to pay which is probably the people that are in this room to the people who are not necessarily willing to pay but who should pay? I was at a hearing last week and someone said, "well, you're talking about a bag of jellybeans and there's a certain amount of money that you've got to cover" and I said, "well, that's true, but the person who's eating those jellybeans should be the one to pay for those jellybeans". So, that's what we're trying to get to.

The second one, if Workers' Compensation Division put these proactive rather than reactive to potential problem employers. We're going to give employers credit ratings. We're going to have them deposit their premium money with us at different times based on this credit rating. In private industry they do this. I don't know how many of you are

accountants or how many of you own your own business. Do you have the same receivables policies towards employers or clients that you deal with who are bad credit risks as you do with your clients who are good credit risks? Probably not. You're likely to give them a break if they pay you early. So, we're going to be looking at some things like this in this Rule. And once we - - - if we can get money from these people, we can control our receivables, then we'll be able to invest our money earlier, that might have some effect on our return and then the amount of money that we would need to collect in premiums.

What Section Fourteen (14) basically does, two (2) main points. We're going to assign employers a tax liability rating. A, B or C, which we'll go through briefly, and then the Division is going to determine the frequency of the deposits from the employers based on that rating and based on the size of the liability as it accrues.

I'm not going to go over this entire slide. It's probably obvious to you that if we want to give you a credit rating, we're going to look at some things like some financial statements, maybe some credit ratings from other bureaus, but one of the factors that we are going to consider, which you may not think of, is what type of business entity are you? Are you in a declining business? What's been your history

with the Fund? Have you been a good employer with the Fund? Have you been an employer who's had a company run up a debt with the Fund, shut it down, started another company, run up a debt with the Fund, shut it down? Okay. In the past we pretty much treated you the same as we've treated that company that's been paying faithfully for seventy (70) years and this Rule is going to allow us to do something a little different. It's going to allow - - - if you're a bad credit risk, we might want you depositing your Comp. money weekly, as you have your payroll, you deposit that money to us. That doesn't mean you're a bad employer. You might be a small employer that doesn't have the cash flow to write that check every quarter but you can write that check once a week or once every two (2) weeks.

So those are the things that we're going to look at and one thing I want to point out about this slide. this is a tax liability not to exceed, so that means that a small employer could still be an A rated employer, which is a good credit rating. but maybe only have a tax limit of five thousand dollars ($5,000.00) or something because they're small.

Now this liability is important because it will go directly to depositing premiums but it will also, as you read the Rule, you'll find it's going to go to what types of plans

are going to be available to you as far as the Deductibles and the Retros and so forth.

And I'll just - - - and the second part of this has to do with the deposits. One thing that I want to say to you is that when this deposit rule was written, if there are any accountants out there - - - are there any CPA's or Accountants or PA's out there? Okay. These rules are going to be very, very similar, you're going to find, to the 941 payroll tax deposit rules. So those of you that are out there in business, talk to people who are doing your payroll and making those deposits for you, because that's where this rule comes from. Take this Rule back and give it to your accountant or whoever is doing your payroll and show it to them because they should have a comfort level - - - a good comfort level with this Rule. It's very much the same thing.

What I want to point out is as you get toward the bottom you can see the A, B depositor and the C depositor which is the - - - has the lower, weaker credit rating. We want our money faster from those people and that should make sense to those of you who are in business because I'm sure you operate in much the same way.

And the next two (2) slides are just - - - they're actually straight out of the 941 circular deposit book and you can just look at those. It's sort of a flow chart of when do

you deposit your money.

Now, if you're like me, you're probably asking, "well, what if I don't deposit enough money?". Just like with your payroll taxes and with your income taxes, it's the same cardinal rule, if you underestimate, you don't deposit enough but you did pay that safe harbor ninety-eight percent (98%) and then you paid by the make-up date there's not going to be any penalty or interest or anything like that but if you miss that safe harbor two percent (2%) or you don't pay that make-up by the make-up date. then there will be penalty and interest.

Then the last slide that I have is just basically some questions that came to mind as I was reading this and when I used to do payroll and those of you who do payroll probably have the same kinds of questions. What if your bank is closed when you're supposed to make a deposit and I don't mean because you missed that four o'clock (4:00) deadline but, I mean, it's closed because of a holiday or something, then you can just deposit it the next day.

And then the last one - - - question that I want to point out is the IRS is moving to electronic transfer - - - is the Division leaning in that direction? Those of you who have read the newspapers, that's properly a timely question. We are leaning in that direction but we've got to get our

deposits situated and get all the bugs worked out of that system so we have to crawl before we can walk, but we will be moving towards that eventually.

And now Ed Staats is going to talk to you a little bit about some things to expect in the future.

MR. STAATS: Thanks, Cheryl. Cheryl mentioned her memories of WVU. I graduated in '69 from WVU and there's some semesters that I can't remember. To give you an example, my roommate and I couldn't add our grades together and get a two (2) point average the first semester. We do have some fond memories.

One of the interesting things that is occurring here - - - there's a few people in this room - - - where's Mr. Robinson? Charles Robinson. Thank you for your comments. We appreciated your telephone call. Mr. Robinson is one of the examples that I read, it was from him. Thank you very much.

Does anybody remember the ketchup commercial? Many years ago, white background, bottle of Hunt's ketchup turned upside down, song in the background is Carly Simon singing "Anticipations" and the ketchup just comes out real slow. Probably not. Well, that's what you can expect with the implementation of this Rule.

Even though we have, over the past few years, crafted several major changes and improvements in our system, in

claims management, financial reporting, receivables management, we've upgraded people's skills, we've upgraded technology. We've redesigned processes. We've expanded statutory authority. We've developed and built a constant vision for a better Workers' Compensation system. Those foundation pieces so necessary to implementation of this financing plan have still not corrected or overcome all the obstacles we face in order to bring better value to you, our State holders.

When we began to build this plan, it didn't just happen. We looked at the best the country had to offer. We looked at California. We looked at Pennsylvania. We looked at Ohio, Michigan, Colorado, Texas, multiple systems and we took the best they had to offer, analyzed the West Virginia market, looked at West Virginia's economic predictions and tried to tailor-make for West Virginia a program that would help solve your Workers' Comp. problems.

The obstacles that we face are very great. There is - - - there are obstacles that represent critical needs to cleanup the information such as the misclassifications: critical needs to support a very sophisticated technology system that we've installed: critical needs to change our existing Comp. among human skills to include insurance and risk management skills and a critical need to communicate and

educate our State holders as to the impact of their decisions on their Workers' Compensation rates.

This financing plan can not be implemented overnight. The obstacles to the success are great but success can be achieved. Do you know how to make that ketchup run out of that bottle faster? You get the right tool. All it is is a table knife and you take it and you stick it up in there and you turn it and you pull it and putting the right tools in place will cause it to speed up. That's what we are about now, because this Fund is so much more capable of implementing a very sophisticated financing plan than it has ever been in the past and every success, as we implement, every solution is going to bring back about its own unique set of problems.

This Rule will create some additional mischief. For instance, the employers in this State are going to be inundated with proposals from organizations developing loss control programs, offering associations to which you belong plans that would include the administration of various types of these financing programs. You will have to judge these proposals on a what's in it for me basis. Who will do the best job for me, for my group? What services are you going to receive? What kind of reports do you have to file? What kind of criteria do you have to maintain? What's your risk for being part of the group? What are the costs to you for being

part of that group? How does that impact your total investment in loss control?

The implementation of this Rule requires the exercising of informed skilled judgment by Fund personnel. Failure to do so will create inequities beyond those we are attempting to cure.

This Rule requires adherence to new procedures, new processes, new policies, new practices by employers and their representatives, all of which established under the authority of the Performance Council with adequate safeguards for review and reversal of those improper judgments, should they occur. Failure to develop those kinds of safeguards will result in additional mischief.

But successful implementation will generate significant benefits to the employers and their employees in West Virginia, the most significant of which is the opportunity to share what's happening in other parts of the country. All across this country are stories and examples of successes where employers and their employees working together have prevented injuries, have reduced their Workers' Comp. costs, have shared the benefits.

This Rule encourages the development of those kinds of successes in our State. The benefits to the State itself, to all of us, are a more financially viable Workers' Compensation

system, thereby improving the State's overall financial health, except to those who do not attempt to control and prevent injuries as under this Rule they will be more responsible for paying the costs of insuring their specific risks and this approach is not intended to allow the shifting of that risk to other employers within this State.

Exhibit Three (3) talked about a framework. One of our objectives was the framework for a system to finance the Workers' Comp. system in the future and create incentives. This Rule establishes that framework. We do not have all the answers. There are many issues yet to be resolved. It's the first step. It is a plan. We hope we're on the right track. We want you to tell us if we're on the right track. We're asking for you to help keep us on the right track.

Randy Suter is going to moderate a ten (10) minute question and answer period about this presentation. We appreciate your interest. We hope that we can help you solve our problems.

MR. SUTER: Go Mountaineers! I spent - - - or misspent perhaps maybe about twelve (12) out of fourteen (14) years here over the course of a couple decades and it's a wonderful time to be in Morgantown, it's nice to be back.

This is not the public comment period. There's going

to be opportunity for you to get up and you had an opportunity to review the Rule or what you've heard today and make your comments as to what your desires are. This is a question and answer period. I've been given about ten (10) minutes to moderate some questions and answers and we're going to try to stick with that. I'm going to also try to stick with one question per person because it's nice - - - a lot of times somebody will get up and they'll say, well, geez, you know, I've got this eighteen (18) part question that I'd like you to answer and it doesn't allow other people an opportunity, so I'm just going to go with it like that and if we have time to come back to you, that's fine.

The other thing I'd like to remind you is to fill out the survey. We really care about you think and it will prevent me from chasing you down the hallway like I did a gentleman last week and I don't think he appreciated it. I won't do that this week. I promise. Do we have any questions? Oh now, there's got to be at least a couple. None? Yes sir and please. when you're speaking. when you stand up. clearly identify yourself because we do have a Court Reporter that's transcribing these and it's nice to put a name along with the comments that are made or questions that are asked.

MR. POMPILI: We were due for a rate

decrease on July 1st based on experience. We didn't get it. When do we get it? Why didn't we get it?

MR. SUTER: Okay. Well, hopefully, I can answer that one. The reason you didn't get - - - if you were due for a rate increase or a decrease as of July 1st, which is the normal period, the rates were frozen and the rates were frozen to allow us the opportunity to put this Rule together and provide a number of different options in a better method of putting your rate making together.

There's been a long history of people not being particularly fond of how rates were made, they did not believe that rates in West Virginia followed the costs. We're trying to correct that. That's why the rates were frozen.

Another question? Yes sir.

MR. EVANS: Steve Evans, Grant County Board of Education. Will the process remain the same for filing our reports and making our deposits for the Fiscal Year ending June 30th, 1997?

MR. SUTER: I think I'll deflect that one to Mr. Staats. It would be my understanding that, for the most part, we're going to implement this Rule in a staged fashion over the course of time and the implementation plan would be more Mr. Staats area.

MR. STAATS: In all probability, yes,

to your question. We anticipate there will be certain pilot projects going on where the members of those will - - - or the participants in the pilot projects would have different reporting requirements. That's the best I can do. We have - - - anticipate full implementation by July 1, 1998 and I think that's on page sixty (60) of the Rule, Section Nineteen (19).

MR. SUTER: Section Nineteen (19), yes.

Any other questions, yes sir?

MR. ALEXANDER: Bob Alexander with TWA. My question is basically if you have an organization that has - - - that has had no claims on the program, yet you're paying all your premiums in there, how do you compensate that organization for that policy for going all that time without anybody being injured or hurt or any lost work. Do you go back and recoup that or give credits for it? There's a lot of companies that don't even use Workers' Comp. based on the nature of their work. How do you handle that?

MR. SUTER: Okay. Ah - - - let me give you an example, it might be best. I know that for a fact that we put a statement out to employers every year indicating what they've paid into Workers' Compensation as opposed to what the actual claims' costs were for that year. Do you know of any other insurance company that calculates it in that

fashion? You'd be a little - - - I suppose you might be a little taken aback if your car insurance bill would come in and it said, well, gee, you paid five hundred dollars ($500.00) in premiums last year and you didn't use anything. Okay. The next year goes by, you pay one thousand dollars ($1,000.00) in premiums over the last two (2) years, you had a fifteen hundred dollar ($1500.00) accident.

They don't - - - they don't calculate rates that way. We don't calculate rates that way. Those cash statements that have come to you over the course of time have been miscommunications. Rates are calculated based upon your experience as opposed to the group that you're in and that's what we want to continue to do.

Any other questions? Yes sir.

MR. WILSON: Yes sir. Ron Wilson, J & J Drywall. We have a problem in that we're being charged a high rate. We're a new company, been in business less than a year. We're paying eighteen percent (18%) and based upon my experience in the general contracting business, we are not a general contractor, however, general contractors are paying about nine percent (9%). We want to know how we can get reevaluated to get our rate down, otherwise, it's going to cause us a great layoff. We went from five (5) employees to twenty-seven (27). We don't want to cause them to lose their

jobs.

MR. STAATS: That maybe, as we've described, one of our concerns. That's why we're trying to - - - give us your address, where to send it - - -

MR. SUTER: It's not an unusual occurrence to be misclassified and if an individual is misclassified, that throws the - - - lets people in the class that they've been classified into out of whack as well as the class that they should be in. It throws it out of whack too, so, some people pay more, some people pay less. We want people to pay what they're supposed to pay.

MR. STAATS: Randy, I want to go back to this gentleman's question over here for just a second. I'm not sure that I felt that we adequately answered the question.

MR. POMPILI: No, you did not.

MR. STAATS: Maybe I can answer it. The existing system of making rates and assessing risks of Workers' Comp. doesn't work. It's not fair. It doesn't work. The situation that you describe is the exact situation we're trying to remedy with this whole program. If you don't have any claims, why should you pay a premium charge except for your normal required insurable risks? Why should you be saddled with the experience of those who have abnormal risks? That's what we're attempting to change right now. How it's

going to impact you specifically, I can not answer that question.

MR. POMPILI: But when will we see the rate decreases? We have spent a lot of time and money to get out rates - - - our experience down and then the rug got pulled out from under us by the change in rules with no promise or guarantee that we are going to be made whole on that in anyway or with any attempt to do that. Right now we're locked in at the higher rate along with all the people that had bad experience that are locked in at the lower rate.

MR. STAATS: When? When we fully implement this program. That's the best I can do for you right now. I'm not going to tell you that tomorrow we're going to fix that. I can't. However, you might be a member of one of our pilot programs, if you're interested in that.

MR. SUTER: We've run up to about ten (10) minutes. I appreciate the opportunity to talk with you and moderate this. There will be a public comment period directly following this portion where you have the opportunity to come to the microphone, we have a Court Reporter here and address your comments and concerns about this Rule in particular to the Compensation Program's Performance Council for their consideration.

Thank you very much.

COMMISSIONER RICHARDSON: At this point I'd like to continue and move forward on the public hearing. I want to know, was anyone besides me concerned that the Chief Financial Officer of the Workers' Compensation Division could not add his grade point average together? I think, Ed, that really says a lot about - - -

MR. STAATS: That's been a few years ago. I have learned a lot since then.

COMMISSIONER RICHARDSON: I also want to tell Amy that, you know, we've made a few contributions to Purdue. We used to have a basketball coach here, he was actually from Charleston, but his name was George King and when he was the coach of Purdue after he left here, they played UCLA for the National Championship and then Fred Schaus coached there for a while and then came back home, so we've got a few ties with West LaFayette.

I have very few people expressing an interest in speaking today. As is always the case, I'm not sure that I can pronounce the last name correctly, so the - - - the first individual who I have listed here is Philip Pompili.

MR. POMPILI: Me again.

COMMISSIONER RICHARDSON: Did I pronounce it correctly?

MR. POMPILI: Yes, very - - - very good.

COMMISSIONER RICHARDSON: Okay. What I'd like you to do is come over and take the mike here and, again, restate your name and affiliation for the record and then after you complete your remarks, if any of the members of the Performance Council would like to ask him any questions, I know he'll entertain them.

MR. POMPILI: My name is Phil Pompili. I'm Plant Controller for Fibair in Reedsville, West Virginia. My comment is that I feel that the guaranteed with merit rating versus the retro versus deductibles - - - your explanations don't have anything out there that helps people to really understand the differences in terms of which would be better for them, which - - - under what circumstances would one normally be better than the other. The way it's written right now, it's just a guess.

COMMISSIONER RICHARDSON: Any of the Council members have a question for Phil?

MR. TUCKER: Maybe somebody from the Division - - - it's my understanding, sir, that there's going to be, after this process is over with, there's going to be some educational seminars to affect - - - to try to answer the questions and educate people to what - - - how the plan can benefit each and every employer in the State of West Virginia. That's my understanding.

COMMISSIONER RICHARDSON: Let me - - - let me - - - let me respond to it for you. Basically what we've tried to do today is two (2) things. One (1) give you the regulations so that you can read and digest and consult with your financial folks or legal folks or insurance folks or whoever you feel you need to consult with to have an informed understanding of where we're headed and to give a high level type of overview of that direction and where we're headed. I mean - - - in the slides, for example, we refer to specific sections and pages of that regulation.

Secondly, what is contemplated is a phased-in approach. The Rule would be effective, potentially, November 1st of this year but it will take us until around July 1 of 1998 to have everything that's being talked about fully operational and probably between November 1, 1996 and July 1, 1997 there would be a number of far more indepth very specific seminars that would go through some what-if's scenarios to put you in a position to make an informed judgment on those kinds of issues.

Any other questions for Mr. Pompili? Thank you very much. We really appreciate your thoughts and your comments and your in-sights.

Now I don't have anyone else that has checked that they want to speak today. I have three (3) names, however,

that put question marks, so I want to ask if any of them want to speak. Frederick LeMasters with America Woodmar?

MR. LEMASTERS: No.

COMMISSIONER RICHARDSON: No. Marvin Tennant?

MR. TENNANT: No.

COMMISSIONER RICHARDSON: Billy Pickle?

MR. PICKLE: I'll give mine later.

COMMISSIONER RICHARDSON: All right. Very good. Now is there anyone else that has anything to offer today that would like an opportunity to make public comment for the good of the order?

MS. FRICH: What forms of education would be - - - something similar to this?

MR. STAATS: Yes it would be seminars.

COMMISSIONER RICHARDSON: Yes, we'll do seminars, but it is not going to be the high level, here's the general concept. It's going to be nitty gritty, here's the policy option, okay, and, you know, we'll - - - notice I used the word policy option. I think it's important to begin to think about this in terms of - - - of an insurance type of product that an employer purchases because these are insurance-like products, when you start to talk about ratings, retro ratings or deductibles, things of that nature.

Yes sir?

MR. ALEXANDER: Bob Alexander again. I didn't sign up to make a comment but I work with a lot of small businesses and the high tech center, software and things of that nature and a lot of the smaller companies are struggling because of the fact that they are small, they have a lot of expenses. Is there going to be something - - - some other rule or some other law that's going to help these companies or the banks that give them, say, more line of credit to handle their expenses they normally don't - - - they're not used to having if they're an industry that does change their rates. Maybe they're an engineering company that say, does strictly software, however, this guy doing hardware or construction engineering and they might parallel him and they're going to be subject to higher rates.

Is there some way you can kind of look at that option for smaller companies, smaller businesses?

COMMISSIONER RICHARDSON: Bob - - -

MR. ALEXANDER: We're talking about ten (10) or less employees, who are pretty significantly tight on payroll. I don't expect you to give me the answer. I just want to throw it out for comment.

COMMISSIONER RICHARDSON: Well, my answer is, would you please reduce your thoughts to writing and submit them to Mr. Suter on the address provided?

MR. ALEXANDER: Sure.

COMMISSIONER RICHARDSON: Because I think that you're - - - listening to what you have to say, I think - - - I believe you're probably thinking about some very specific ideas and concerns that you can probably articulate more thoroughly than just with a quick comment like that.

Yes ma'am?

MS. KECKLEY: I also have the same concern about small business, because we have a lot of small construction companies that are seriously considering payment under the table because they just can't make it.

COMMISSIONER RICHARDSON: I need for you to give your name and affiliation if you would, for the record, or I'll get in trouble with the Court Reporter.

MS. KECKLEY: I'm Brenda Keckley.

COMMISSIONER RICHARDSON: Okay. And the comment from Brenda Keckley has to do with small businesses providing relief in the context of discouraging under the table, off the books type of activities. You know, we really are striving for a zero tolerance on improper cash only type of activities. As you can imagine, it is difficult to catch, but in the entire area of collections and accounts receivable management enforcement we have a number of different types of antenna out to different aspects of State and soon local government to

help more effectively hold those folks accountable.

Now, ah - - - a cornerstone to that has to be the rate making system because the whole reason that they drive off of the books and want to do in cash, or one of the reasons, is because of the cost and I think this system potentially will help that particular category as long as it's an employer that is safe and experiences low accidents. The costs are going to be such that it's going to be more, I mean, frankly, the potential repercussions of doing what you just described are phenomenal in this State, from law suits to criminal prosecutions or whatever and you know, I don't know if the potential cost is worth the price that they're saving by working off the books, but it does occur and I really think this program has the potential to help the company that - - - that has a low accident level. Now those who don't, it's going to cost them more.

Did you want to say something, Ed?

MR. STAATS: Well, there's three (3) specific points that's in this proposed Rule that were designed with primarily small business in mind and one of those points is the annual premium of five hundred dollars ($500.00) or less to help - - - to try to help those smaller companies, less paperwork , there's less filing requirements and so on.

The other two (2) primary product lines that impact small business directly is the Deductible Programs as well as the Group Retro Program. Those are designed to help small companies as well as large ones. This - - - these are opportunities for them to utilize.

We are cognizant of the problems of small and medium size companies in this State. The five hundred dollar ($500.00) limitation impacts over thirteen thousand (13,000) businesses, so, as the Commissioner said, it is not in their best interest to work off the books. The cost of a claim is enormous and can hurt them terribly. This program is attempting to solve some of those problems.

COMMISSIONER RICHARDSON: Do we have other questions or comments?

MR. BACHTEL: I got one question.

COMMISSIONER RICHARDSON: Name?

MR. BACHTEL: Bill Bachtel. This is just a question. It's not a comment. What is the stand you all take - - - I know here a year or so ago the newspaper was full of two (2), three hundred thousand dollar ($300,000) backpay to Workers' Comp. What are you going to do? Write them off - - - write them off as a percentage?

COMMISSIONER RICHARDSON: Let me tell you what we have done and then I'll tell you what we're going to do.

What we have done is - - - some of the changes that were made in the Workers' Compensation law, 1990, 1991, 1993 and 1995, not only deal with benefits which is really what's been talked about most in the Press, but also has a tremendous impact on collections. Some of the tools that we now have available to us, that we've not had in the past, that we're currently using include permit blocking with the environmental protection activities of the State, contractor licensure interception, the - - - we are putting together a number of criminal prosecutions against folks that have not filed and not paid and I'm talking about, I think, ninety-five (95) different employers indicted since January.

We have a number of initiatives along those lines that we have worked and continue to move forward and, in fact, we saw our collections improve on premiums this past year to the point that we collected around forty-five million (45,000,000) beyond projections, okay. We will continue down that road.

Now, we've just recently had a - - - finally a contract approved with the Attorney General's Office where we're going to retain some outside counsel to pursue some collection efforts up the daisy chain, if you will, to bigger companies that have kind of set up some smaller companies and those smaller companies haven't paid their Workers' Comp. premiums.

This is a significant problem in real dollars. In terms of the accounts receivable in comparison to the premium base, it is not nearly as high in comparison to how much money, you know, if you look at how much money's been owed and how much money's been paid, it ain't that bad, but if you look at it in just plain old real terms, it's a lot of money.

Now what we have is about two hundred million (200,000,000) out there in the coal industry alone between active and inactive accounts and of those active - - - of that two hundred million (200,000,000) about forty million (40,000,000) is in active accounts. All the other industries combined we've got about eighty million (80,000,000) active and inactive, forty million (40,000,000) of which is inactive accounts and we've got a number of initiatives underway, some of which will go after those inactive accounts in the coal industry as well as active accounts.

Now that's what we've done and are doing. What about the future? If you look back through some of the presentation, you'll recall that Cheryl talked a good about collections and accounts receivables management. There really hadn't been much accounts receivable - - - well there hadn't been any until the very recent past. I mean, the fact of the matter is, that West Virginia Workers' Compensation system had a technology that didn't even track accounts receivable until

folks like us got involved and this particular proposal seeks to address collections and accounts receivables management through some of the types of things, and I can't remember the slide, but you'll recall the five hundred dollar ($500.00) payment issue that touches thirteen thousand (13,000) employers. You'll recall that based on being an A, B, or C risk you might pay more frequently or less frequently. If we're making an employer that's a bad risk pay monthly or semi-monthly, then we don't have nearly the potential for accounts receivable problem as we do if they're paying quarterly.

And those are some of the strategies that we intend to employ with these new rules that I think are going to help us prevent some of that and manage that kind of problem in the future.

MR. STAATS: And that is really illustrated in one of the slides that Cheryl went through who - - - from who's willing to pay to who should pay and that's, if you go through them, that's really what we're trying to do here. This system, in the past, was whoever was willing to pay and whatever rate you were willing to pay, regardless of the risk, that's what you were going to get charged on this system.

This approach is designed to change that.

COMMISSIONER RICHARDSON: Go ahead.

MR. ALEXANDER: One of the largest employers is the State - - - we have never heard anything. Have you been able to get any money out of the State for us for Workers' Comp?

COMMISSIONER RICHARDSON: Who do you mean?

MR. ALEXANDER: Well, the State of West Virginia owed to Workers' Comp. how many million dollars?

COMMISSIONER RICHARDSON: No, there were two (2) agencies that had a significant problem with us, the Corrections' Department - - -

MR. ALEXANDER: Department of Highways - - -

COMMISSIONER RICHARDSON: No, no. Highways is good. Highways is good. The Corrections Department and Mine Safety and Training and both of those debts were addressed in appropriations by the Legislature last year.

Now I can remember Public Service Commission owed, you know, thirteen dollars and forty-seven cents ($13.47) or something and a few things like that. Highways has not been a problem, that I'm aware of, is it?

MR. ALEXANDER: That's not what come out in your reports - - - the Department of Highways owed - - -

MR. STAATS: I don't think - - -

COMMISSIONER RICHARDSON: I don't - - - well - - -

MR. ALEXANDER: I think what - - -

COMMISSIONER RICHARDSON: I don't know - - - I'm not familiar with what you're talking about, but go ahead.

MR. ALEXANDER: I think - - - accounts receivable - - - inadequacies (inaudible) - - -

MR. STAATS: If I understood what he was saying - - -

COMMISSIONER RICHARDSON: No, he's talking about money owed and he feels that Highways owed us a big debt, but I honestly - - - I don't recall Highways having a big debt with us. Now there was two (2) agencies that had big debts and they - - - they have been addressed and are being addressed, but Highways is not a problem.

Yes sir? Name?

MR. MASON: My name is Thomas Mason. Is the new rating system going to be based off of experience rating over the past number of years or is it going to pick up and be based off of experience. how is the Supreme Court rulings striking down subsections of Workers' Comp. laws and cases which have been ruled on and the employers not collect. Now they're going to be able to go back and collect against them. How is this going to affect the ratings?

COMMISSIONER RICHARDSON: Well, I don't - - - we're

going to have a financially sound system. The law compels us to do that, but there isn't going to some general surcharge or something to fund the cost of that Supreme Court decision and what that Supreme Court decision did is it said that making those law changes is okay but you got to do it at this date instead of that date. Okay.

Now, I'm not overly concerned about that. It might require a longer time line for the financing of the unfunded liability that the bill and rate changes were designed to address, but I don't expect it to have a direct impact on - - - in an immediate sense on the way we set rates.

As far as experience rating, do we have specific plans on the number of years of experience that will be used in the new rate making system, Ed?

MR. STAATS: Those are policy decisions that the Performance Council will make. It will probably vary with the industry however. Chris talked about the severity of injuries and the frequency of injuries. Instead of just saying three (3) years or every - - - what we're saying is it will depend on the industry. For example,the clerical industry. severity and frequency of the plan would be substantially different than the severity and frequency in the coal industry; therefore, we may use a much longer period to evaluate rates and experience models for the coal industry

than we would the clerical industry.

MR. MASON: You're still going to base it on the industry instead of an individual company itself?

COMMISSIONER RICHARDSON: It will be a little bit of both.

MR. STAATS: It's both.

COMMISSIONER RICHARDSON: It is now and it will be. Other questions or comments? Yes ma'am?

MS. CAVENDER: Alisha Cavender, Morgantown - - -

COURT REPORTER: I'm sorry, I can't hear.

MS. CAVENDER: Alisha Cavender - - -

COURT REPORTER: You're going to have to really speak up, because I can't hear you.

COMMISSIONER RICHARDSON: Alisha Cavender.

MS. CAVENDER: Thank you. My question was, you talked about trying to decide or trying to find those people who should pay Workers' Comp. who aren't. How are you going to - - - how do you plan to do this? How do you plan to come up with the people who don't pay and get them to pay? What type of information are you going to use to figure out who doesn't pay?

COMMISSIONER RICHARDSON: You can talk about it, Ed. It's part of the field auditing effort, but go ahead.

MR. STAATS: It will be part of the field audit effort. You know, several things. Who's doing business and not paying. That's one thing. One thing you can actually do in Workers' Comp. is open up the yellow pages because there's a few ads in there that you will find that do not have Workers' Comp. coverage.

There are all kinds of investigative techniques that we can utilize. That's just an example, to find people that are not paying or better yet, who do not have Workers' Comp. coverage which is mandatory in the State and that's one.

The field audit is designed - - - part of it is are they in the right class and are they paying the right amount. They're all kinds of ways.

MS. CAVENDER: I was curious as to whether you had access to perhaps the state tax returns - - -

COMMISSIONER RICHARDSON: Yes.

MS. CAVENDER: If they're filing state taxes they should be paying Workers' Comp.

MR. STAATS: We have an agreement with the Internal Revenue Service. That was never approached before. We have a technology system to match against multiple data bases that we've never attempted to use before.

COMMISSIONER RICHARDSON: We're in the process right now of a centralized business registration program involving

the State Tax Department, Unemployment Comp., Work Comp., Contractor's Licensing - - - it will ultimately branch - - - Secretary of State's Office, it will ultimately branch out to others. I mean, there is a variety of different techniques under way now.

The Comp. Program has a pretty sophisticated technology. We really need to get some of the technology in other parts of the State government up to speed that can help on these types of enforcement activities, but quite frankly, up until now, we barely scratched the surface.

Other questions or comments? Members of the Performance - - - whoops. Kenny?

MR. JACKSON: I have one - - -

COMMISSIONER RICHARDSON: This is Ken Jackson.

MR. JACKSON: Ken Jackson, K-Ray Incorporated. I have a question. Is there provision to address out-of-state contractors coming in as far as being assessed Workers' Compensation? How are you going to address the out-of-state contractor coming in?

COMMISSIONER RICHARDSON: Well, again, it's part of the field auditing process. You know, you've got to check up on permits. You've got to - - - there's - - - there's no sure way, okay. Some of them, it doesn't apply. If it's a casual activity for a very limited period of time they're going to be

in the State of West Virginia, we have a reciprocity provision in the Code that gives us or gives them the opportunity to stick with the coverage that they've got in the other State, okay.

When they - - - but on projects and stuff, you know, again, it becomes a part of the field auditing exercise that we were talking about a few minutes ago.

Did you want to add anything?

MR. STAATS: Not really. Well you are aware of this. One of the reasons, for example, a good solid field auditing program in West Virginia is extremely critical is those folks who are paying right, who are reporting properly are having costs shifted to them. I mean, that's in the system. That's the way it's been working as a result of those people willing - - - their willingness to pay, those costs would be shifted to them.

We don't want that to happen. That's why we're trying to change how we price and investigate and determine the risks.

MR. JACKSON: I'm just not quite sure how a field audit would work whenever you have a company coming out of say, North Carolina, which really doesn't have a base here, just comes in and does security in three (3) or four (4) counties.

COMMISSIONER RICHARDSON: Well if they do - - - we need to know about that. It sounds like you know of a specific example and if they're coming in and doing security, that is not a casual activity in all likelihood and if there's - - - if there's a company in Point Marion that comes over here to put in an HVAC system that is going to be here for five (5) days, then chances are we don't care a whole lot about that company because they got coverage in Pennsylvania and they're doing a one time casual activity. If they advertise in the Morgantown phone book and in the newspapers here and hold themselves out as doing business in the Monongalia County area then there's a different issue there, okay.

In the instance that you describe, ah - - - we should be able to detect that kind of thing because those folks are going to end up with a bad day, not just with us, but with State Tax and others as well. I mean, in fact, if they're doing security work in West Virginia, if I recall correctly, I think they have to register with the Secretary of State's Office, is that where you - - -

MR. TUCKER: Yes they do.

COMMISSIONER RICHARDSON: I mean - - - so there's a number of different checks that we will have available to you. If you want me to tell you it's going to be a failsafe system,

I'm not going to tell you that, because there is none.

MR. JACKSON: I understand. But I just wanted to know, you know, is the out-of-state companies being addressed under the new provisions?

COMMISSIONER RICHARDSON: Well, it is, but I'm not going to sit here or stand here and tell you that it - - - that it's all going to be perfect, okay.

We want a level playing field and one of the most unlevel playing fields that we experience is in that category where either the people underground or the people from out of state just aren't playing by the rules and I think it's been a very serious problem for West Virginia and shame on. not just the Workers' Comp. but any of the regulatory agencies of our State and local governments that have done an inadequate job of holding those folks accountable.

Other questions or comments? Dick, do you have any thoughts that you'd like to share?

Fred?

MR. TUCKER: One comment. I guess. I thought we as a Council addressed, in order to do business in the State of West Virginia, you have to have either a license. permit. Don't we have rules or in the process of making rules that says that before that license can be issued, renewed, that they have to show that they are in compliance or

up-to-date with participating in, paying into, Workers' Comp.?

COMMISSIONER RICHARDSON: Yeah, we've got it on the books and it's being implemented - - -

MR. TUCKER: But it's in the stages of that, right?

COMMISSIONER RICHARDSON: We're in the very beginning stages of that - - -

MR. TUCKER: I think that kind of might be one - - - what this gentleman here, you know, if course if they come over here, sneaky peeking, you know, you - - - that's a problem, but people that's going to do business on any length of time, I think we're going to be able now with the rules that the Council has promulgated and made that's going to be - - - that's part of law now will deal with that situation, I think, on a better basis than what we've had in the past.

And concerning the gentleman over here, the - - - I applaud the new Rule due to the fact that we don't let them get to where they owe us three hundred million dollars ($300,000,000). You know, the old adage that an ounce of prevention is worth a pound of cure. I think that now we've seen over the last several months some people that got caught and they're prosecuted, some of it's too late because they don't have anything to take - - - we have derived quite a bit

from some of those folks but the thought of maybe I'm going to be the next one audited has brought people out of the woodwork to start paying where they hadn't paid in the past.

But, I think, you know, the rule itself, as a member of the Council, I'll take a long hard look at it because I think it's long overdue that I want to see employers do what they're supposed to do. I want to see employees do what they're supposed to do and I don't leave out the Division of Workers' Compensation. They have to do what they're supposed to do, you know, and whatever it takes to implement this, you know, as a member of the Council, I'm going to be there trying to see that they do that.

The people, we're going to have to have some staff in it, we're going to have to have some people to do this, but I think the Rule, if we would have had the Rule several years ago, the hocus-pocus that's been described here would not take place. We wouldn't be faced with the deficit, however big it is. We might have had a deficit but it wouldn't been as big as it is now, but I think that - - - I appreciate the attendance of all the people here and there was some very good questions and comments and I urge you, any of you that have any questions in your mind, any comments, please comment because we do take a look at these things. They're not just sent to us.

Now I'm Chairman of the Claims Committee that this bill - - - this Rule has come out of the Finance Committee, that Mr. Epps is the Chair, but we will work together on it. We will dissect the comments, you know, to make - - - to try to get all we can into the Rule because I've heard some good comments here today and made some notes to that effect and I appreciate that. Please file your comments with Mr. Suter before the date so we can have the advantage of taking a look at those and I appreciate each and everyone of you for coming here today.

COMMISSIONER RICHARDSON: Sneaky peeking is a technical term.

MR. TUCKER: I deal with coal companies so I've got experience in that.

COMMISSIONER RICHARDSON: Mr. Epps, any comments? Mr. Jarrett?

MR. JARRETT: No.

COMMISSIONER RICHARDSON: Mr. Sullivan?

MR. SULLIVAN: No.

COMMISSIONER RICHARDSON: I want to thank everyone for coming. Amy, beat Purdue. Thank you.

Whereupon, the hearing was duly concluded.

* * *

STATE OF WEST VIRGINIA
COUNTY OF MONONGALIA, TO-WIT:

I, A. Lucinda Glance, Certified Stenomask Reporter, do hereby certify that the foregoing is, to the best of my skill and ability a true and accurate transcript of all of the evidence introduced and proceedings had in the above-captioned hearing on the 19th day of September, 1996, as reported by me by stenomask and thereafter reduced to typewriting.

A. Lucinda Glance

CERTIFIED STENOMASK REPORTER