

**PART I GENERAL - ALL SELF-INSURERS**

**A. Definitions.** When used in these rules, the following words or terms shall have the meaning as described in this section.

1. Certified Audit - an audit upon which the auditor expresses his professional opinion that the accompanying statements present fairly the financial position of the self-insurer or fund in conformity with generally accepted accounting principles consistently applied, and accordingly including such tests of the accounting records and other auditing procedures as considered necessary in the circumstances.
2. Common Claim Fund - a fund maintained by a Group Self-Insurer for the sole purpose of paying claims imposed by the provisions of the Arkansas Workers' Compensation Law.
3. Common Self-Insurer - employers who are members of the same trade or professional association entering into agreement to pool their liabilities.
4. Conditional Reserves - acceptable assets equal to the security deposit requirement plus any additional contingent reserves established by the trustees or required by the Commission.
5. Contingent Liability - the amount that a Self-Insurer's fund may be obliged to pay in excess of a given fund year's standard premium collected or on hand. This liability is considered funded if a security deposit equal to the total amount of the contingent liability has been posted. This liability is considered unfunded if a surety bond has been posted equal to all or a portion of the total amount of the contingent liability.
6. Current Ratio - the ratio of current assets to current liabilities as shown in the most recent financial statement.
7. Group - Common Self-Insurer or Homogeneous Self-Insurer.

8. Homogeneous Self-Insurer - employers who are engaged in the same type of business activity or pursuit entering into agreement to pool their liabilities.
9. Loss Development - the change in incurred loss from one point in time to another.
10. Loss Fund - the retention of liability for a self-insurer, either individual self-insurer or group self-insurer, under the terms of an aggregate excess contract. In the absence of an aggregate excess policy, it is the amount of money allocated to pay claims.
11. Net Safety Factor - any amount needed in a given fund year in addition to current loss reserves to fund future loss development.
12. Third Party Administrator - a business which has met all the requirements of Commission Rule 38 and has received authorization from the Commission to act as a third party administrator. The term "Service Agent" is synonymous with the term "third party administrator" as used in the workers' compensation laws and the rules of the Commission.
13. Surplus - all other assets a fund may have on hand in excess of all loss reserves, actual and contingent liabilities and net safety factors in all fund years.
14. Trustees - a group of members elected by a group self-insurer for stated terms of office, to direct the administration of a group self-insurer, and whose duties shall include responsibility for approving applications for new members in such group. The majority of such trustees must be members of the group, but a trustee shall not be an owner, officer or employee of the service agent. They may delegate ministerial authority for membership approval to such person as they select, provided that person is not an owner, officer or employee of the service agent.
15. Trustee's Fund - any fund under the control of the board of trustees of a Group Self-Insurer which is not part of the loss fund or which is not required to pay claims.
16. Working Capital or Net Current Assets - current assets less current liabilities.

17. Written Manual Premium - As defined by Ark.Code.Ann. 11-9-303(b). The rates used for the experience period shall be those published by the Arkansas Workers' Compensation Commission.

**B. Acceptable Securities**

1. The securities acceptable to the Commission as a security deposit shall be certificates of deposit issued by a state chartered bank or a national chartered bank in the State of Arkansas. The securities acceptable to the Commission as a security deposit shall include surety bonds in a form prescribed by the Commission which are issued by any corporate surety which meets the qualifications prescribed in Part I, B, 2 of this rule. The securities acceptable to the Commission as a security deposit shall also include letters of credit in a form prescribed and approved by the Commission. These three approved methods of posting security must follow strict compliance with this rule.

2. Any corporate surety, to be eligible for writing self-insurers' bonds in the State of Arkansas, shall be an admitted or approved carrier by the Insurance Commissioner of the State of Arkansas to transact such a business in the state, and its latest financial statement on file with the Insurance Commissioner shall at all times show assets, including surplus to policyholders, at least equal to the latest Insurance Commissioner requirement for admission of a new company to do business in the State. Any securities held by the Commission may be exchanged or replaced by the depositor with other securities of like nature and amount. Any surety bond may be exchanged or replaced with another surety bond provided the required thirty (30) day notice of termination of liability is given to the Commission. Whenever an employer discontinues business in the state or desires to terminate his status as a self-insurer, or desires to replace securities with a Surety Bond, he shall so notify the Commission and may recover the securities deposited with the Commission upon posting in lieu thereof a special release bond issued by a corporate surety in an amount equal to the total value of such securities. The special release bond shall cover all existing liabilities under the laws and shall remain in force for a period in accordance with the statute of limitations as specified in the Act, and until such time, to be determined by the Commission, as all obligation under the Act have been fully discharged. The Commission shall be authorized to bring suit upon any surety bond so posted, to procure prompt payment of compensation liabilities.

3. Self-insurers shall make all funded securities payable to the Arkansas Workers' Compensation Commission, in trust for (name of depositor) as per Commission requirements. All such securities shall be filed with the Workers' Compensation Commission for deposit with the Treasurer of the State of Arkansas under custody receipt. No other depository is acceptable. The Commission shall be authorized to sell and/or collect the securities in whole or in part, in the case of actual or imminent default of the employer or group, to pay compensation liabilities. Interest accruing on any negotiable securities so deposited shall be collected and transmitted to the depositor, provided he is not in default in payment of compensation benefits or the annual premium tax. All prefunded deposits shall remain in the custody of the Commission for a period of time as the statute of limitations provided in the laws may dictate, and until such time as all obligations of the employer or group have been fully discharged, such time to be determined by the Commission.

4. The Commission permits deposit of an "Irrevocable Standby Letter of Credit" as an alternative security deposit. The Commission will furnish upon request the prescribed and approved forms for use in utilizing this alternative. The Commission requires that an irrevocable standby letter of credit be accepted only from state chartered banks or national chartered banks with offices in the State of Arkansas. Banks eligible for use must be covered under the Federal Deposit Insurance Corporation (FDIC) and must be acceptable to the Commission. Letters of credit issued by a bank that do not meet the standard as mandated by this rule may be accepted by the Commission with a confirming letter of credit issued by a bank meeting the prescribed criteria. The Commission shall be authorized to make demand and collect on the posted letter of credit in whole or in part, in the case of actual or imminent default of the employer or group to pay compensation liabilities. All "Irrevocable Standby Letters of Credit" shall remain in the custody of the Commission for a period of time as the statute of limitations provided in the laws may dictate, and until such time as all obligations of the employer or group have been fully discharged, such time to be determined by the Commission.

**C. Filings of Reports - Penalties**

1. Each individual self-insurer or group shall file premium tax reports, financial statements, summary loss data and such other reports and statements at such time and in such manner as the Commission shall require. This rule places this responsibility on the employers, groups and service companies to

perform their prescribed duties and responsibilities without prompting from the Commission. Failure or refusal of any self-insurer or group to file the prescribed reports with the Commission within the prescribed time period shall subject the mentioned self-insurer to a civil penalty in such amount as the Commission may prescribe, not to exceed one hundred (\$100) per infraction per day, and shall be sufficient cause for the revocation of the self-insurer privilege. Failure to pay such penalty within thirty (30) days of notification shall be considered good cause for revocation of the self-insurer privilege.

2. The Commission shall require annual or otherwise periodic payroll audits from each employer, or group of employers, self-insured under the laws to determine the proper assessment for tax purposes. The amount of tax shall be based upon the written manual premium for the calendar year in question. The tax is limited by law at three (3) percent of the tabulated written manual premium for each self-insurer. Each Individual self-insurer or group shall maintain a true and accurate payroll record, which shall be made available during reasonable business hours, upon demand, to the Commission and its authorized representatives. Unless payroll records are maintained in such manner that a true and accurate division by workers' compensation classification codes can readily be determined for proper rating, the entire payroll shall be presumed to be within the classification to which the highest insurance rate is applicable. If such audits reveal a deficiency in the amounts reported to the Commission or amounts paid to the Commission, the Commission may assess the cost of such audit against such self-insurer. This audit report and payment of the proper tax is due on or before April 1 of each year.

3. Each individual self-insurer and group shall file annual statements of financial condition with the Commission in a form acceptable to the Commission. Individual Self-Insurers must maintain a level of financial strength, financial position, and financial ratios that would be required of any new applicant. These statements must be prepared by a certified public accountant and must be certified audits, except that an individual self-insurer may be allowed to submit another type of statement acceptable to the Commission. Public employers entering the individual self-insurance program may satisfy these requirements by furnishing independent certified audits or by furnishing the most current audit report as prepared by the Legislative Joint Auditing Committee. Any less requirements of these annual statements will be at the discretion of the Commission. An additional security deposit or surety bond may be required in the absence of a certified

audit. Interim financial reports may be required in addition to these annual financial statements at the discretion of the Commission. This report is due on or before April 1 of each year.

4. Summary Loss Data will be filed with the Commission by each individual self-insurer or group self-insurer under the laws. This report shall be filed with the Commission on an annual basis, or on a quarterly basis, or on any interim basis as prescribed by the Commission. This report will be due within thirty (30) days after each prescribed evaluation period, and unless otherwise directed, this report will be due not later than February 1 of each year. This self-insurers' statement on this report will be on a form prescribed by the Commission, and any substitute form must contain all the requested data. This report will include but not be limited to the name of the employer, name of the injured employee, claim number, date of accident, nature of injury, amounts paid on the claim for indemnity, or medical and outstanding reserves, if any. This report will cover all incurred losses of the evaluation period as well as any pending claims where any type payment is made or reserve is pending. This report will require reasonable reserves on all open pending claims.

#### **D. Contracts for Excess Insurance**

1. Aggregate and specific excess insurance with liability limits and retention amounts acceptable to the Commission may be required as a condition of approval of any individual self-insurer or group self-insurer as hereinafter provided, except qualifying public employer self-insurer groups are entitled to statutory options and limitations.

2. Any casualty insurance company to be eligible to write excess liability coverage for individual self-insurers or group self-insurers in the State of Arkansas, shall at all times meet the same standard as required of any corporate surety as outlined in Part I, B 2.

3. No contract or policy of excess insurance shall be recognized by the Commission in considering the ability of an applicant to fulfill its financial obligation under the workers' compensation laws unless such contract or policy:

a. Is issued by a recognized, admitted or approved casualty insurance company with the minimum qualifications established by these rules.

b. May not be cancelled except upon thirty (30) days written notice by registered or certified mail to the other party to the policy and the Arkansas Workers' Compensation Commission.

c. Is renewable at the expiration of the policy period unless written notice by registered or certified mail is given to the other party to the policy and the Arkansas Workers' Compensation Commission, thirty (30) days prior to such expiration, by the party desiring to cancel or not to renew the policy.

d. If it contains any type of commutation clause, provided (1) that any commutation effected thereunder shall not relieve the underwriter(s) of further liability as respects claims and expenses unknown at the time of such commutation or in regard to claims apparently closed but which may be subsequently revived by or through a competent authority, and (2) that in the event the underwriter proposes to redeem any future payments payable as compensation for accidents occurring during the term of the policy by the payment of a lump sum to be fixed as provided in the commutation clause of the policy, provided not less than thirty (30) days prior notice of such commutation shall be given to the Arkansas Workers' Compensation Commission by registered or certified mail by the underwriter(s) or their agent.

e. In the event any commutation is permitted and effected, the Commission shall have the right to direct that such sum either (1) be placed in trust for the benefit of the injured employee(s) entitled to such future payments of compensation, or (2) be invested in approved securities and deposited with the Commission to assure such future payments of compensation to the employee(s) entitled thereto.

f. Contains the provision that obligations due under the terms of the policy shall be made to a party other than the employer, such party to be designated by the Commission if it is deemed to be in the best interest of the employees covered by these laws.

#### **E. Servicing for Self-Insurers - Qualifications**

1. Each individual self-insurer or group, as a condition of approval to self-insure, shall be required to provide proof of compliance with the provisions of this section regarding servicing requirements.

a. It shall be the sole responsibility of each individual self-insurer or group to provide for qualified persons to service its program in the areas of claims adjusting, underwriting, safety engineering and loss control. Should the individual self-Insurer or group be unable or unwilling to provide any or all of these services through the use of its own employees, then it shall contract with outside agencies with established qualifications to provide these services.

b. Individual self-insurers and groups may contract for claims adjusting with only those third party administrators approved as such by the Commission.

c. In the case where an individual self-insurer or group elects to contract with an approved third party administrator, the Commission may, at its discretion, choose to use the third party administrator as an intermediary in its dealings with the employer. In the case where no third party administrator is used, the Commission will deal with the employer only.

d. In the case where an individual self-insurer or group elects to contract with an approved third party administrator, the self-insurer or group shall notify the Commission in writing prior to the effective date of said contract.

e. In order to represent a group self-insurer client, the third party administrator must maintain an Arkansas claims office and have at least one resident adjuster with check authority.

**F. Revocation or Termination of the Self-Insurer Privilege**

1. Failure to comply with any of the rules or with any order of the Commission within the time prescribed shall be considered good cause for revocation or termination of self-insurer privilege, within the meaning of A.C.A. 11-9-404. Noncompliance with any of the provisions of the Workers' Compensation laws, particularly those relating to time and method of compensation payments, the furnishing of medical treatment and filing of accident and compensation reports and failure to pay any assessment, shall likewise be deemed good cause. The Commission shall give written notice of such revocation or termination to the employer and/or his agent(s). The employer shall have fifteen (15) days from the date of mailing of the notice to request a hearing on the revocation or termination. Failure to request a

hearing within the time prescribed shall result in the revocation or termination becoming effective thirty (30) days from the date of mailing of the original notice. In no event shall any revocation or termination become effective prior to the date that a hearing on the question is scheduled. Such notice shall be served personally or by certified or registered mail upon all interested parties. This review and appeal process will also be applied to application issues.

2. It will be necessary for a self-Insurer to notify the Commission if the status of the self-insurer is materially changed (individual ownership to partnership or to corporation, merger, etc.) at which time the new entity shall be required to qualify. In the event there is a change in majority ownership of a self-insurer, the self-insurer privilege granted to an individual self-insurer shall be at the discretion of the Commission.

**G. Enforcement by Commission of Order of Compliance; Order of Denial; or Order of Termination of Self-Insured Status**

If the Commission has probable cause to believe that an order denying or terminating self-insurer status is being violated or that an employer who is approved or has been previously approved as a self-insurer is liquidating or may be about to liquidate and distribute its assets to its stockholders or to its members without providing for its obligation as a self-insurer to pay or arrange for the payment of compensation and benefits as prescribed for in the law, the Commission may cause an action to be filed in the Circuit Court of Pulaski County or in the county in which such person does business to enjoin and restrain such person from engaging in such method, act, or practice.

**H. Tenure of Authority**

Certificates of Authority granting the privilege of being a self-Insurer for workers' compensation purposes shall expire on May 1 of each year. To effect the renewal of the certificate, the self-insurer must furnish or have on file with the Commission, an acceptable financial statement for its current fiscal year and must fully comply with the laws and the rules of this Commission. Certificates of Approval for service companies must be renewed on an annual basis. Any information submitted by an employer in its application to become a self-insurer or in its request for renewal of that authority will be treated with strict confidence by the Commission. Any information submitted by a third party administrator in its application for approval or in its request for renewal of that approval will be treated with strict confidence by the Commission.

## **PART II INDIVIDUAL SELF-INSURER - APPLICATION**

- A.** Each employer desiring to become an individual self-insurer, as contemplated by A.C.A. 11-9-404, shall make application to the Commission for such privilege on a form prescribed by the Commission, and this application shall be filed with the Commission sixty (60) days prior to the desired effective date. The application shall contain answers to all questions propounded and shall be under oath.
- B.** Before considering the application, the Commission will require:
1. Financial statement of a current date showing a net worth of not less than two hundred fifty thousand dollars (\$250,000) and a current ratio of more than 1 to 1 (1:1) and a working capital of an amount establishing financial strength and liquidity of the business to pay normal compensation claims promptly. The requirement for a more than 1 to 1 (1:1) current ratio may be waived in the case of a public utility or in those instances where generally recognized accounting principles peculiar to a particular industry make this requirement unreasonable. In no event shall the net worth be less than three (3) times the annual loss fund, or in the event that aggregate excess insurance is not maintained, then the net worth shall be at least three (3) times the self-insurer's annual standard premium. Financial statements dated six (6) months or more prior to the date of application may be required to be accompanied by an affidavit stating that there has been no material lessening of net worth nor significant deterioration of current ratio since the date of the statement.
  2. In considering the financial strength and liquidity of the business to pay normal compensation claims, the Commission will take into consideration contracts or policies of excess insurance in accordance with Part I, D.
  3. Each employer shall execute and file with the Commission an agreement, which shall be part of their application, whereby he agrees (1) to fully discharge by cash payment all amounts required to be paid by the provisions of the Act and (2) to deposit with the Commission acceptable securities or corporate surety bond to secure guarantee of payment of compensation liabilities unless waived by the Commission.
  4. Each individual self-insurer shall satisfy the Commission that it has complied with the provisions of Part I, E 1 and Rule 29 where applicable before approval for self-insurer status may be granted by the Commission.

In addition, the Commission may require periodic proof that the self-insurer is complying with these standards on a continuing basis.

5. The application for the privilege of being a self-insurer shall be accompanied by a remittance in the amount of one hundred dollars (\$100), payable to the Arkansas Workers' Compensation Commission. This fee will not be refunded, regardless of the disposition of the application.

6. Each Individual self-insurer shall satisfy the Commission that it has complied with the requirements of the Arkansas Self-Insurer Guaranty Fund.

7. An investigation and study of the financial and other capabilities of the Individual applicant to meet its obligation under the laws, will be conducted by the Self-Insurance Division of the Commission. The Self-Insurance Division of the Commission will submit an evaluation report to the Commission, after which formal approval for self-insurer status may be granted by the Commission.

C. Pursuant to A.C.A. 11-9-404, each individually self-insured employer shall deposit with the Commission acceptable securities or post a surety bond issued by a corporate surety authorized to do business in the State of Arkansas except that the Commission may waive the posting of any securities or surety bond by public employers all in accordance with the following rules:

1. In every case where an application is favorably considered, the Commission will then decide the amount of acceptable securities or surety bond which will be required; provided, however, that in no case will the amount of securities or surety bond be less than one hundred thousand dollars (\$100,000) except that the Commission may waive the posting of any securities or surety bond by public employers. A majority owned subsidiary of a parent company, duly admitted as a self-insurer, may not be required to post securities or surety bond, provided the parent company, by resolution, guarantees payment of the liabilities of the subsidiary.

2. The minimum excess insurance requirements that an Individually Self-Insured employer shall maintain shall be determined by the Commission.

### **PART III GROUP SELF-INSURER - APPLICATION**

A. In the case of group coverage as contemplated by A.C.A. 11-9-404, for the express purpose of establishing a group self-insurer, to be administered under the direction of an elected board of trustees, and to provide workers' compensation coverage for a group of employers classified as a common self-insurer group or a homogeneous self-insurer group and who are eligible for membership in accordance with the terms of the Indemnity Agreement, application shall be made to the Workers' Compensation Commission at least sixty (60) days prior to the desired effective date of self-insurer status. Any application submitted with less than thirty (30) days remaining before the desired effective date may be rejected without further consideration. The application shall be made on forms prescribed by the Commission and shall contain answers to all questions propounded and shall be under oath.

1. The application as submitted by the trustees of the self-insurer group shall be accompanied by:

a. An indemnity agreement jointly and severally binding the group and each member thereof to comply with the provisions of the Arkansas Workers' Compensation laws and Rules and Regulations of the Commission. The indemnity agreement requirement mentioned here and elsewhere in this rule is not applicable to public employer groups.

b. Individual application of each member of the group applying for membership in the self-insurer group on the inception date of the Group.

c. Current financial statements supported by a certified audit of at least two (2) members showing the combined net worth of these members applying for self-insurer status on the inception date of the group self-insurer to be not less than one million dollars (\$1,000,000), a combined current ratio of more than 1 to 1 (1:1) and a working capital of an amount establishing financial strength and liquidity of the business to pay normal compensation claims promptly and showing evidence of the financial ability of the group to meet its obligation under the laws. For members joining the group self-insurer after inception date or any time after initial qualification of the group, a certified audited financial statement shall not be required of any member of a group either for initial membership or as a condition for continued membership, however, such certified audited financial

statement will be accepted. For members joining an established private employer self-insurer group they may provide in lieu of a certified audited financial statement, a statement, certified by the president and treasurer of the member in the case of a corporation, and by the owner and general partners, respectively, in the case of an individual proprietorship or partnership, to the effect that such financial statement is true and correct to the best of the knowledge and belief of the signing authorities. However, the Commission may at its discretion grant a waiver to the requirement that financial statements be submitted as part of the application process for new members. The waivers will be issued on a group by group basis depending on the financial stability of the group and the Group's consistent adherence to the Laws and Rules of the Commission. For members joining an established public employer self-insurer group, they may provide in lieu of a certified audited financial statement, a statement prepared by the Legislative Joint Auditing Committee or a financial statement certified by the member entity executive head and the member entity treasurer in the same manner as required of private employer members.

d. A set of by-laws governing the operation of the group self-Insurer shall conform to the conditions specified in Part III, D 1.

e. The application for the privilege of being a group self-insurer shall be accompanied by a remittance in the amount of one hundred dollars (\$100), payable to the Arkansas Workers' Compensation Commission. This fee will not be refunded, regardless of the disposition of the application.

f. Each group self-insurer shall satisfy the Commission that it has complied with the requirements of the appropriate guaranty fund.

2. Each group self-insurer shall satisfy the Commission that it has complied with the provisions of Part I, E 1 before approval for self-insurer status may be granted by the Commission. In addition, the Commission may require periodic proof that the self-insurer is complying with these standards on a continuing basis.

3. An investigation and study of the financial and other capabilities of the group applicant to meet its obligation under the law, will be conducted by the Self- Insurance Division of the Commission. The Self-Insurance Division of

the Commission will submit an evaluation report to the Commission, after which formal approval for self-insurer status may be granted by the Commission.

4. Subsequent to the inception date of the group self-insurer, prospective new members of the group self-insurer shall submit an application on a form prescribed by the Commission for membership to the board of trustees. The trustees must approve the application for membership in accordance with these rules and the terms of the indemnity agreement for the application to be binding upon the group self-insurer and prospective members. The application for membership shall then be filed with the Commission thirty (30) days prior to the desired effective date of self-insurer status. The Commission may authorize groups to issue binders whereby the trustees may "bind" coverage for an individual member for a period of thirty (30) days. If such a binder has been issued, the trustees must file a copy of the binder with the Commission within five (5) days of issuance and submit a completed application with supporting documents to the Workers' Compensation Commission, Self-Insurance Division within fifteen (15) days of the effective date of coverage. At no time shall coverage be extended, by means of a binder, whereby the effective date of coverage precedes the issue date by more than ten (10) days. Failure of a group to meet the requirements regarding the issuance of binders and/or the submission of applications may subject the group to the loss of authority to issue binders and shall be sufficient grounds for denying an application. The Commission retains the right to reject the admission of any new member.

**B. Minimum Security Deposit For Group Self-Insurer**

Each group self-insurer, pursuant to A.C.A. 11-9-404, shall deposit and maintain with the Commission acceptable securities or post a surety bond issued by a corporate surety duly authorized to do business in the State of Arkansas, in an amount determined by the Commission, but not less than two hundred thousand dollars (\$200,000.00). The amount of the security deposit or bond shall be determined at least annually based on net safety factors, contingent liabilities, growth of the group, and other data as submitted by the group self-insurers to the Commission. The amount of the security deposit or bond requirement mentioned here and elsewhere in this rule is not applicable to public employer groups.

**C. Group Self-Insurers' Funds and Surplus**

1. Each group self-insurer shall consist of two (2) separate funds, that is, the trustee fund and a common claim fund. All premiums and assessments charged to the member are paid into the trustee fund. The trustee fund shall be used to pay the operational expenses of the group self-insurer.

2. From the trustee fund there shall be created a separate common claim fund. The common claim fund shall be placed in a designated depository, and this fund will be maintained at all times by the authorized service organization or the designated adjuster or individual(s) charged with the handling and payment of claims. This fund shall be adequate to cover any current incurred and contingent liabilities as imposed by the laws.

3. Employers participating in a group self-insurer shall pay the standard premium or percent thereof as designated by the group and approved by the Commission, with exceptions being when at the discretion of the group manager or fiscal agent of the group it becomes necessary to surcharge or assess all members because of the loss experience of the group. Members of a group self-insurer may elect to participate in the experience rating plan established by the National Council on Compensation Insurance or any other acceptable rating plan as approved by the Commission. In this event an experience modification shall be determined for each member by the service agent. Any discounts or deviations from written manual premium approved by the Commission shall apply to all members of the group.

4. Surplus funds for a fund year in excess of the amount necessary to fulfill all obligations under the laws for that fund year may be declared refundable by the trustees, provided that such amount shall not be paid to the members until approved by the Commission.

**D. Solvency of Group Self-Insurer and Trustee Responsibility**

1. The trustees of each authorized group self-insurer shall cause to be adopted a set of by-laws which shall govern the operation of the fund. These by-laws shall contain, but not be limited to, the following subjects:

a. Qualifications for group self-insurer membership, including underwriting considerations.

b. The method for selecting the trustees, including the term of office.

c. The method for amending the by-laws.

2. In addition to the above by-laws, the trustees shall adopt regulations on the following subjects which shall be binding on the group manager and third party administrator:

- a. Investment of surplus funds and claim reserves.
- b. Frequency and extent of loss control and safety engineering services to members.
- c. The size of the common claim fund.
- d. A schedule for payment and collection of premium including a definition of delinquent premium.
- e. Membership admission and expulsion procedures.
- f. Delineation of authority granted to the trustees.
- g. Delineation of authority granted to the group manager.
- h. Delineation of authority granted to the third party administrator.
- i. Procedures for obtaining projected payroll information for initial premium billing and actual payroll information for final premium adjustments after the close of the policy period to determine the actual premium to be collected for the policy period.
- j. Procedures for handling disputes regarding premium paid by members.

3. In order to insure the financial stability of the operations of each and every group self-insurer, the board of trustees of each group shall be responsible for all operations of the group. The board of trustees of each group shall take all necessary precautions to safeguard the assets of the group, including:

- a. The designation of a fiscal agent and/or group manager to administer the financial affairs of the group, who shall furnish a fidelity bond with the trustees as obligee, in an amount sufficient to protect the group against the misappropriation or misuse of any funds or securities. The amount of the bond shall be determined by the trustees, and evidence of such bond shall be filed with the

Commission, said bond being one of the conditions required for approval of the establishment and continued operation of the group self-insurer. Such fiscal agent or group manager shall not be an owner, officer, or employee of the service organization.

b. All loss funds or funds of any type shall remain in the custody of the trustees or the authorized group manager, provided, however, that a common claim fund for payment of compensation benefits due and other related expenses may be established for the use of the authorized service organization. The service organization or the designated adjuster or individual(s) charged with the handling and payment of claims shall furnish a fidelity bond covering its employees, with the trustees as obligee, in an amount sufficient to protect all funds placed in such common claim fund.

c. Requiring of the accounts and records of the Group to be audited annually or at any time as may be required by the Commission, such audits to be made by certified public accountants or by authorized representatives of the Commission, with the Commission reserving the right to prescribe a uniform accounting system to be used by group self-insurers and/or service organizations, and the type of audits to be made, in order that it may determine the solvency of the group self-insurer. Copies of audits prepared by those other than Commission personnel shall be filed with the Self-Insurance Division of the Commission within three (3) months after the close of the fiscal year.

d. The trustee or fiscal agent or group manager shall not utilize any of the funds collected as premium for any purpose unrelated to workers' compensation. Further, they shall be prohibited from borrowing any money from the group self-insurer or in the name of the group self-insurer without advising the Commission of the nature and purpose of the loan and obtaining Commission approval.

e. The trustees shall be authorized to invest trustees' funds, claims reserves and surplus provided the Trustees shall not invest more than twenty-five (25%) percent of such funds (as determined by market value at the time of initial purchase) for a given fund year in corporate or municipal bonds. The following are the only acceptable types of investments:

(1) Savings accounts, certificates of deposit, or similar accounts in a duly chartered commercial bank whose deposits are federally insured.

(2) Savings accounts, savings certificates, or similar accounts in a duly chartered savings and loan association whose deposits are federally insured.

(3) Direct obligations of the State of Arkansas.

(4) Direct and indirect obligations of the United States, such as notes, bonds, mortgages or bills which are backed by the full faith and credit of the United States Government.

(5) Corporate or general obligation municipal bonds, of Arkansas cities only, that are publicly traded provided that such bonds have:

(a) a rating equal to or higher than “A-” as rated by Standard & Poor's or “A3” as rated by Moody's at the time of initial purchase.

(b) no more than a five (5) year maturity from original purchase date.

In the event of downgrades in a bond's rating after initial purchase, the total amount invested shall not exceed thirty (30%) percent of all funds for a given fund year, and at no time shall any funds be invested in any bond whose rating has dropped below a rating of “BBB+” (as rated by Standard & Poor's) or “BBB1” (as rated by Moody's).

f. The trustees shall report annually, as part of the statement of financial condition of the group self-insurer, a schedule showing all investment income earned during the fiscal year just ended.

4. The Trustees shall review at least annually the following items for the purpose of determining whether these areas of concern are being adequately provided for:

- a. Third party administrator performance
- b. Loss control and safety engineering
- c. Investment policies
- d. Collection of bad debt
- e. Admission and expulsion procedures
- f. Group Manager performance

5. Any changes in the by-laws or written regulations shall be filed with the Commission no later than ten (10) days after their taking effect. The Commission reserves the right to declare any by-law or regulation null and void if it is in violation of these rules or the law.

6. The indemnity agreement required pursuant to Part III, A.1.a. shall conform to the form of the indemnity agreement as prescribed by the Commission, and shall contain all its provisions, but may also contain other provisions not inconsistent with these rules or with the required provisions, and wherever the term "service agent" appears therein the term "group manager" or "fiscal agent" may be substituted as may be necessary to reflect the respective authority, responsibility, and duties of these agents, consistent with these rules.

7. The minimum excess insurance requirements that a group self-insurer shall maintain shall be determined by the Commission, except qualifying public employer self-insurer groups are entitled to statutory options and limitations. **(Effective date April 1, 1989; revised August 8, 1995, effective August 29, 1995; revised effective September 20, 2001; revised effective January 1, 2006)**