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Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule. To review the entire year's schedule, please check out the web site at <http://www.sos.state.mo.us/adrules/pubsched.asp>

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RULES—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 26, *Missouri Register*, page 27. The approved short form of citation is 26 MoReg 27.

The rules are divided in the *Code of State Regulations* in this system—

Title	Code of State Regulations	Division	Chapter	Rule
1	CSR	10-	1.	010
Department		Agency, Division	General area regulated	Specific area regulated

They are properly cited by using the full citation, i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division in the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

RSMo—Cite material in the RSMo by date of legislative action. The note in parentheses gives the original and amended legislative history. The Office of the Revisor of Statutes recognizes that this practice gives users a concise legislative history.

Rules appearing under this heading are filed under the authority granted by section 536.025, RSMo 2000. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the *Missouri* and the *United States Constitutions*; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons and findings which support its conclusion that there is an immediate danger to the public health, safety or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

Rules filed as emergency rules may be effective not less than ten (10) days after filing or at such later date as may be specified in the rule and may be terminated at any time by the state agency by filing an order with the secretary of state fixing the date of such termination, which order shall be published by the secretary of state in the *Missouri Register* as soon as practicable.

All emergency rules must state the period during which they are in effect, and in no case can they be in effect more than one hundred eighty (180) calendar days or thirty (30) legislative days, whichever period is longer. Emergency rules are not renewable, although an agency may at any time adopt an identical rule under the normal rulemaking procedures.

**Title 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and Division of
Personnel
Chapter 5—Working Hours, Holidays and Leaves of
Absence**

EMERGENCY AMENDMENT

1 CSR 20-5.020 Leaves of Absence. The Personnel Advisory Board is amending subsection (1)(A) by adding a new paragraph 7.; and amending subsection (2)(B) by adding a new paragraph 6.

PURPOSE: This amendment allows employees subject to furloughs without pay and voluntary leaves without pay taken in lieu of furloughs, relating to shortage of funds or for other reasons which are outside the employee's control, to continue to earn annual leave and sick leave without pro-ration for the hours in which they are furloughed or on leave without pay.

EMERGENCY STATEMENT: This emergency amendment informs state agencies that employees on furlough or voluntary leave without pay deemed necessary by reason of shortage of funds, or for other reasons which are outside the employee's control and which do not reflect discredit on the service of the employee, shall continue to earn annual leave and sick leave without pro-ration for the hours in which they are on leave without pay. The Personnel Advisory Board finds a compelling governmental interest, which

*requires this emergency action. The State is considering immediate implementation of furloughs due to budget shortfalls in the FY 2002 budget ending June 30, 2002. Public employees morale is critical to maintaining an effective workforce. Employees who take a furlough or related voluntary leave without pay should not have to experience a reduction in annual and sick leave earned along with reduced pay. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri* and *United States Constitutions*. The Personnel Advisory Board believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed May 22, 2002, effective June 1, 2002, and expires November 27, 2002.*

(1) Annual leave or vacation with pay shall be governed by the following provisions:

(A) Employees who are employed on a full-time basis in positions of a continuing or permanent nature shall be entitled to annual leave or vacation with full pay as follows:

1. If they are paid on a monthly pay period, computed at the rate of ten (10) hours for each calendar month of service in which they are in pay status for one hundred sixty (160) or more hours, until they complete ten (10) years of total state service. Employees who have completed ten (10) years of total state service shall earn annual leave at the rate of twelve (12) hours per month. Employees who have completed fifteen (15) years of total state service shall earn annual leave at the rate of fourteen (14) hours per month;

2. If they are paid on a semi-monthly pay period, computed at the rate of five (5) hours for each semi-month of service, in which they are in pay status for eighty (80) or more hours, until they complete ten (10) years of total state service. Employees who have completed ten (10) years of total state service shall earn annual leave at the rate of six (6) hours per semi-month. Employees who have completed fifteen (15) years of total state service shall earn annual leave at the rate of seven (7) hours per semi-month;

3. For the purposes of this rule—

A. For employees paid on a monthly pay period, this shall mean, any month during which an employee is eligible to earn any annual leave credit under this and subsequent sections shall be a month of state service. For employees paid on a monthly pay period, annual leave will be credited at the rate of one-half (1/2) the full-time accrual rate for months in which the employee is in pay status from eighty to one hundred nineteen (80-119) hours and three-fourths (3/4) the full-time rate for months in which they are in pay status from one hundred twenty to one hundred fifty-nine (120-159) hours;

B. For employees paid on a semi-monthly pay period, any semi-month during which an employee is eligible to earn any annual leave credit under this and subsequent sections shall be a semi-month of state service. For employees paid on a semi-monthly pay period annual leave will be credited at the rate of one-half (1/2) the full-time accrual rate for semi-months in which the employee is in pay status from forty (40) hours and pro-rated for all hours in which they are in pay status from forty to eighty (40-80) hours;

C. Personnel whose normal duties require them to remain on duty at their workstation for shifts of twenty-four (24) hours or longer shall be exempt from the provisions of this section. Their annual leave compensation shall be as established by the appointing authority, subject to review and approval by the personnel advisory board, consistent with the work schedule necessary to accommodate the safety and convenience of the public;

4. Annual leave shall not be credited to employees who have ceased active duty preliminary to separation from the state service except that this provision shall not apply to an employee who has submitted a formal notice of retirement;

5. Except when granted in accordance with subsection (1)(E), annual leave or vacation with pay shall be granted at the times public service will best permit and only on written application approved by the appointing authority;

6. Annual leave shall not be credited to any employee while on a paid leave of absence for educational purposes when that leave is for a period of three (3) or more months;

7. Notwithstanding any other provisions to the contrary, any employee placed on a furlough without pay, pursuant to 1 CSR 20-3.070(8), or who voluntarily requests a leave of absence without pay in lieu of being furloughed, shall continue to earn annual leave as if the employee had actually been working during the time of the furlough. Upon approval by the appointing authority, an employee in a position subject to a furlough may take a voluntary leave of absence without pay in lieu of being furloughed.

(2) Sick leave shall be governed by the following provisions:

(B) Employees who are employed on a full-time basis in positions of a continuing or permanent nature shall be allowed sick leave with full pay as follows:

1. If they are paid on a monthly pay period, computed at the rate of ten (10) hours for each calendar month of service in which they are in pay status for one hundred sixty (160) or more hours. Sick leave will be credited at the rate of one-half (1/2) the full-time accrual rate for months in which they are in pay status from eighty to one hundred nineteen (80–119) hours and three-fourths (3/4) the full-time rate for months in which they are in pay status from one hundred twenty to one hundred fifty-nine (120–159) hours.

2. If they are paid on a semi-monthly pay period, computed at the rate of five hours for each semi-month of service in which they are in pay status for eighty (80) or more hours. For employees paid on a semi-monthly pay period sick leave will be credited at the rate of one-half (1/2) the full-time accrual rate for semi-months in which the employee is in pay status from forty (40) hours and pro-rated for all hours in which they are in pay status from forty to eighty (40–80) hours. Sick leave will be credited for semi-months in which they are in pay status;

3. Sick leave shall not be credited to employees who have ceased active duty preliminary to separation from the state service except that this provision shall not apply to an employee who has submitted a formal notice of retirement;

4. In all cases where an employee has been absent on sick leave, the employee immediately upon return to work shall submit a statement in a form the appointing authority may require indicating that the absence was due to illness, disease, disability or other causes for which sick leave is allowed under these rules. The appointing authority shall establish and advise employees of required procedures for initial and continuing notification by the employee to the appointing authority regarding absence due to illness and for submission of a written request for allowance of sick leave together with proof of illness as the appointing authority deems necessary;

5. Sick leave shall not be credited to any employee while on a paid leave of absence for educational purposes when that leave is for a period of three (3) or more months;

6. Notwithstanding any other provisions to the contrary, any employee placed on a furlough without pay, pursuant to 1 CSR 20-3.070(8), or who voluntarily requests a leave of absence without pay in lieu of being furloughed, shall continue to earn sick leave as if the employee had actually been working during the time of the furlough. Upon approval by the appointing authority, an employee in a position subject to a furlough may take a voluntary leave of absence without pay in lieu of being furloughed.

AUTHORITY: section 36.070, RSMo 2000. Original rule filed Aug. 20, 1947, effective Aug. 30, 1947. For intervening history, please

consult the Code of State Regulations. Emergency amendment filed May 22, 2002, effective June 1, 2002, expires Nov. 27, 2002.

Title 2—DEPARTMENT OF AGRICULTURE
Division 30—Animal Health
Chapter 2—Health Requirements for Movement
of Livestock, Poultry and Exotic Animals

EMERGENCY RULE

2 CSR 30-2.011 Prohibiting Movement of Elk, White-Tailed Deer and Mule Deer into Missouri

PURPOSE: This rule places a temporary moratorium on elk, white-tailed deer and mule deer entering Missouri. This action is taken to protect Missouri's elk, white-tailed deer and mule deer industry and wildlife from importation of Chronic Wasting Disease (CWD) from states with known positive herds and states of unknown status. This moratorium protects Missouri's livestock and wildlife industry from importation of diseases that potentially threaten the public health, safety and welfare.

EMERGENCY STATEMENT: The state veterinarian has determined that CWD could be devastating to Missouri's elk, white-tailed deer and mule deer population, as well as other wildlife industries. This moratorium is based on reports of several states finding animals that have tested positive for CWD and the fact that animals have been exported to several states from known infected herds. The industry needs time to adjust to all the various and many times stringent restrictions that many states have implemented.

The agency has weighed the compelling governmental interest against the due process rights of the public to notice and comment. In light of potential threat to the elk, white-tailed deer and mule deer industry and other wildlife industries, there is a compelling governmental interest to enact this rule through emergency rule-making. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. In developing this rule the agency has encouraged discussion with interested parties and provided them the opportunity to offer their comments. The agency believes this emergency rule to be fair to all persons and parties under the circumstances. This emergency rule was filed on May 1, 2002, effective May 11, 2002 and expires October 27, 2002.

(1) Elk, white-tailed deer or mule deer, sixteen (16) months of age and over, will not be allowed to enter the state of Missouri from the effective date of this rule through August 31, 2002. Thereafter, any elk, white-tailed deer or mule deer entering the state must have an entry permit and otherwise be in compliance with 2 CSR 30-2.010 Health Requirements for Movement of Livestock, Poultry and Exotic Animals Entering Missouri.

AUTHORITY: section 267.645, RSMo 2000. Emergency rule filed May 1, 2002, effective May 11, 2002, expires Oct. 27, 2002.

Title 20—DEPARTMENT OF INSURANCE
Division 500—Property and Casualty
Chapter 6—Workers' Compensation and Employer's
Liability

EMERGENCY RESCISSION

20 CSR 500-6.960 Plan of Operation for the Workers' Compensation Residual Market. This rule described the various

aspects of the Department's Alternative Residual Market (ARM) Plan for operating the Missouri workers' compensation residual market.

PURPOSE: This rule has been rescinded and replaced with a new emergency, set forth elsewhere in this *Missouri Register*, which provides for additional flexibility in administering the ARM Plan, flexibility which is needed under the current circumstances.

EMERGENCY STATEMENT: The ARM Plan has been in effect since July 1, 1995. It provides for the selection of an on-the-risk "contract carrier" to administer the workers' compensation residual market, which is a market-of-last-resort established by law for employers who are required to carry workers' compensation insurance on their employees but who are unable to find such coverage through ordinary means. The events of September 11, 2001 have raised the possibility that no carrier would be able to marshal the resources or possess the inclination necessary to function as a "contract carrier" under the rule as it has operated since 1995. As a result, the Department has extensively modified the provisions of this rule to allow the Director to select the best alternative for administering the ARM Plan that is possible under the circumstances. A proposed rule containing these changes appears elsewhere in this *Missouri Register*, to deal with conditions as they might present themselves in future years.

The new realities of the post-9/11 marketplace also pose immediate threats to the ARM Plan which require emergency action for this year as well. Massive increases in the cost of the current contract carrier's reinsurance mean it will be unable to continue on in that capacity at acceptable premium rates beyond the present contract year's termination date of June 30, 2002. In order to preserve the state's compelling interest in insuring that the Department continue to provide a viable residual market as required by law, it is necessary to take emergency action to assure that the Director can secure a contractor to provide employers with coverage for the contract period beginning July 1, 2002. However, because the proposed "regular" rule cannot go into effect prior to the beginning of this next contract period, an emergency rule is also necessary to provide the Director with additional flexibility for the contract period beginning on July 1, 2002. The emergency rule allows the Director to use either an on-the-risk contract carrier or a plan administrator, it reduces the loss retention level a contract carrier is required to bear from 115% of collected premium down to 100%, and it allows the Director to appoint a contract carrier or plan administrator without a bid process if doing so is necessary under the circumstances. This last option will likely be necessary for the contract period beginning July 1, 2002. The provisions of the prior version of this regulation that are repealed by this emergency rescission are replaced by the provisions of the new emergency rule.

The scope of the emergency rescission is limited to the circumstances creating the emergency. The emergency rescission complies with the protections extended in the *Missouri and United States Constitutions*. As indicated above, the Department has concurrently filed both an emergency rule and a proposed rule; under the proposed rule, formal notice and comment opportunities will be provided during the regular rulemaking process. The Department believes this emergency rescission is fair to all interested parties affected by the circumstances. This emergency rescission was filed on May 7, 2002, becomes effective May 17, 2002 and expires February 18, 2003.

AUTHORITY: sections 287.896 and 374.045, RSMo 1994. Emergency rule filed June 15, 1995, effective July 1, 1995, expired Oct. 28, 1995. Original rule filed April 3, 1995, effective Sept. 30, 1995. Emergency rescission filed May 7, 2002, effective May 17, 2002, expires Feb. 18, 2003. A proposed rescission covering this same material is published in this issue of the *Missouri Register*.

Title 20—DEPARTMENT OF INSURANCE
Division 500—Property and Casualty
Chapter 6—Workers' Compensation and Employer's Liability

EMERGENCY RULE

20 CSR 500-6.960 Plan of Operation for the Workers' Compensation Residual Market

PURPOSE: The purpose of this emergency rule is to modify Missouri's Alternative Residual Market (ARM) Plan to allow the Director of Insurance greater flexibility in selecting an entity to administer the state's residual market for worker's compensation insurance for the upcoming contract period.

EMERGENCY STATEMENT: The ARM Plan has been in effect since July 1, 1995. It provides for the selection of an on-the-risk "contract carrier" to administer the workers' compensation residual market, which is a market-of-last-resort established by law for employers who are required to carry workers' compensation insurance on their employees but who are unable to find such coverage through ordinary means. The events of September 11, 2001 have raised the possibility that no carrier would be able to marshal the resources or possess the inclination necessary to function as a "contract carrier" under the rule as it has operated since 1995. As a result, the Department has extensively modified the provisions of this rule to allow the Director to select the best alternative for administering the ARM Plan that is possible under the circumstances. A proposed rule containing these changes appears elsewhere in this *Missouri Register*, to deal with conditions as they might present themselves in future years.

The new realities of the post-9/11 marketplace also pose immediate threats to the ARM Plan which require emergency action for this year as well. Massive increases in the cost of the current contract carrier's reinsurance mean it will be unable to continue on in that capacity at acceptable premium rates beyond the present contract year's termination date of June 30, 2002. In order to preserve the state's compelling interest in seeing that the Department continue to provide a viable residual market as required by law, it is necessary to take emergency action to assure that the Director can secure a contractor to provide employers with coverage for the contract period beginning July 1, 2002. However, because the proposed "regular" rule cannot go into effect prior to the beginning of this next contract period, an emergency rule is also necessary to provide the Director with additional flexibility for the contract period beginning on July 1, 2002. The emergency rule allows the Director to use either an on-the-risk contract carrier or a plan administrator, it reduces the loss retention level a contract carrier is required to bear from 115% of collected premium down to 100%, and it allows the Director to appoint a contract carrier or plan administrator without a bid process if doing so is necessary under the circumstances. This last option will likely be necessary for the contract period beginning July 1, 2002.

The scope of the emergency rule is limited to the circumstances creating the emergency. Although published in its entirety due to the large number of organizational changes required, substantively, the new rule differs from the prior rule it replaces only as the new provisions granting the Director additional flexibility in selecting someone to administer the residual market. The emergency rule complies with the protections extended in the *Missouri and United States Constitutions*. As indicated above, the Department has concurrently filed a proposed rule under which formal notice and comment opportunities will be provided during the regular rulemaking process. The Department believes this emergency rule is fair to all interested parties affected by the circumstances. This emergency rule was filed on April 26, 2002, becomes effective May 6, 2002 and expires February 6, 2003.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. Therefore, the material which is so incorporated is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material.

(1) Definitions. For purposes of this rule, unless the context clearly requires otherwise, the terms below are defined as follows:

(A) Allocated Loss Adjustment Expense (ALAE) shall mean ALAE as that term is defined in the National Council on Compensation Insurance, Inc. (NCCI)'s *URE Workers Compensation Statistical Plan*, as approved by the department for use in Missouri, in effect on January 1, 2002, and any subsequently approved amendments thereto;

(B) Alternative Residual Market Plan (ARM Plan) means the Missouri workers' compensation residual market plan set forth in this rule, and its predecessor rule, established under section 287.896, RSMo and in effect since July 1, 1995;

(C) Assessment means the amount owed by and assessed against reinsurers under the ARM Plan because the amount of losses and allocated loss adjustment expense paid by the plan administrator and any servicing carriers, plus the plan administrator's percentage of the premium, exceed the amount of premium collected by the plan administrator and any servicing carriers, for the period in question;

(D) Collected premium or premium collected means premiums for workers' compensation insurance actually received by a contract carrier, plan administrator or servicing carrier for policies issued during the period of the contract under the request for proposal (RFP) for the ARM Plan;

(E) Contract carrier means an insurer selected by the department to administer the ARM Plan under the "contract carrier option" or "emergency option" of the ARM Plan, and to thereby be at risk for the losses of the plan up to the retention level set by the director, for the term of the contract carrier agreement and any extensions thereof;

(F) Contract carrier agreement means the terms of the RFP issued by the department, the proposed response to that RFP submitted by the insurer ultimately selected to be the contract carrier by the department, and the performance standards and any modifications thereto agreed to by the contract carrier and the department to implement the RFP under the ARM Plan;

(G) Contract carrier option means that alternative under the ARM Plan whereby the director selects a contract carrier to administer the Missouri residual market for workers' compensation insurance, after a formal public bidding process, under which always the contract carrier will be at risk for the losses of the Missouri residual market up to the retention level set by the director. Losses in excess of that retention level shall be reimbursed to the contract carrier by Missouri's voluntary workers' compensation market insurance companies, which are participating as reinsurers under this rule;

(H) Day means calendar day as opposed to business day;

(I) Deficit means the determination made under the ARM Plan that the amount of losses and allocated loss adjustment expense paid by the contract carrier which, when divided by the amount of premium collected by the contract carrier, is greater than or equal to the retention level selected for the contract carrier for the policies issued during the one (1)-year period of the contract carrier agreement and any extensions thereof;

(J) Department (or regulator) means the Missouri Department of Insurance;

(K) Direct assignment carrier means an insurer, other than a servicing carrier, that has elected and been authorized by the department to receive direct assignments pursuant to the servicing carrier option under the ARM Plan. Whether or not to allow insurers the option of functioning as a direct assignment carrier as opposed to functioning as a servicing carrier is up to the director;

(L) Direct assignment means the act of a plan administrator of assigning a particular employer seeking coverage under the ARM Plan to an insurer authorized by the director to function as a direct assignment carrier. The direct assignment carrier will be at risk for all of the insured losses of an employer so assigned, for period of the policy. The direct assignment carrier shall be entitled to all of the premium generated by an employer so assigned, but in return it shall forego the benefit of the reinsurance normally afforded servicing carriers for losses under the servicing carrier option of the ARM Plan;

(M) Director means the director of the Missouri Department of Insurance;

(N) Emergency option means that alternative under the ARM Plan whereby the director selects either a contract carrier or a plan administrator to administer the Missouri residual market for workers' compensation insurance without using a formal public bidding process;

(O) Employer means any business organization or enterprise that is required under Chapter 287 of the *Revised Statutes of Missouri* to maintain workers' compensation insurance in Missouri, or which has voluntarily decided to elect to be covered by such laws. The term shall include any business organizations or enterprises that are affiliated as a result of common management or common ownership;

(P) Losses means losses and allocated loss adjustment expenses as those terms are defined in the *URE Workers Compensation Statistical Plan* of the NCCI, and any other losses in excess of policy limits or extra-contractual obligations authorized under this rule;

(Q) National Council on Compensation Insurance, Inc., (NCCI) means a particular advisory organization licensed in this state to make and file classifications, loss costs and rating plans for workers' compensation insurance. The NCCI functions as the administrator of the Workers' Compensation Insurance Plan (WCIP) plan residual market mechanism. The NCCI is also the organization named in the Missouri Aggregate Excess of Loss Reinsurance Mechanism to administer insurance carrier participation, deficit assessments and other components of that mechanism under the ARM Plan from July 1, 1995 until the effective date of this rule, and to function as a reinsurance administrator as defined under this rule;

(R) Performance standards are the standards to be met by a contract carrier or plan administrator in administering the ARM Plan;

(S) Plan administrator means an entity selected by the department to administer the ARM Plan under the "servicing carrier option" or "emergency option" of the ARM Plan, for the term of the plan administrator agreement and any extensions thereof;

(T) Plan administrator agreement means the terms of the RFP issued by the department, the proposed response to that RFP submitted by the entity ultimately selected to be the plan administrator by the department, and the performance standards and any modifications thereto agreed to by the plan administrator and the department to implement the RFP under the ARM Plan;

(U) Plan administrator's percentage of premium means that percentage of the premium collected under the servicing carrier option of the ARM Plan which, per the plan administrator agreement, the plan administrator is allowed to retain to cover the expenses of the plan administrator and any servicing carriers used by the plan administrator. The plan administrator's percentage of premium shall be an amount sufficient to cover the expenses of the plan administrator in administering the ARM Plan, plus an additional amount for profit and contingencies;

(V) Policy or policies means a policy or policies of workers' compensation insurance as defined under this rule issued to risks insured under the ARM Plan;

(W) Producer means an insurance producer as defined in section 375.012, RSMo, whose privileges under either the WCIP or the ARM Plan have not been suspended or revoked, provided, however, that such producer shall, for purposes of this rule, be considered to be acting on behalf of the employer when placing coverage through the ARM Plan and not as an agent of the contract carrier, the plan administrator, or any other insurer;

(X) Reinsurance administrator means the organization identified under this rule to administer the reinsurance provisions of this rule. The reinsurance administrator shall be the NCCI unless another entity is appointed by the director;

(Y) Reinsurer means a Missouri voluntary market workers' compensation insurer in its capacity as a reinsurer for any deficits under the contract carrier option of this rule or for any losses under the servicing carrier option of this rule. The term does not include any direct assignment carriers authorized under the servicing carrier option of this rule;

(Z) Retention level means the level of losses, specified by the director as part of a contract carrier agreement, for which the contract carrier will be responsible, prior to any responsibility of the reinsurers;

(AA) Request for proposal (RFP) means an RFP issued by the department setting forth the specifications for the ARM Plan and inviting potential respondents to submit proposals by which the department can select a contract carrier under the contract carrier option, or plan administrator under the servicing carrier option, to administer the ARM Plan. The department may specify in a single RFP specifications for both a contract carrier option and a servicing carrier option, and may decide as part of its bid evaluation process which option to select;

(BB) Servicing carrier means an insurer, other than a direct assignment carrier, selected by the plan administrator under the servicing carrier option of the ARM Plan to provide insurance services to insured employers and injured employees covered under the ARM Plan;

(CC) Servicing carrier option means that alternative under the ARM Plan whereby the director selects a plan administrator to administer the Missouri residual market for workers' compensation insurance, after a formal public bidding process. The plan administrator will provide any necessary insurance services itself, if it is a licensed and admitted Missouri workers' compensation insurer, or through other insurers functioning as servicing carriers or direct assignment carriers. Losses paid under the servicing carrier option by or on behalf of the plan administrator shall be reimbursed to the plan administrator by Missouri's voluntary workers' compensation market insurance companies, which are participating as reinsurers under this rule;

(DD) Standard premium means the state premium determined on the basis of authorized rates, any experience modification, any applicable schedule rating modification, loss constants and minimum premiums. The expense constant shall be excluded from determination of the standard premium;

(EE) Workers' compensation insurance means:

1. Statutory workers' compensation and occupational disease including liability under the Longshore and Harbor Workers' Compensation Act, as amended, and the Federal Coal Mine Health and Safety Act of 1969, as amended;

2. Employers liability insurance written in connection with a workers' compensation policy;

3. Such other coverages as are approved by the director, including those approved after being recommended by the advisory board authorized under section (3) of this rule;

(FF) Workers' Compensation Insurance Plan (WCIP) means the NCCI's plan of operation for administering workers' compensation residual markets. The WCIP was the plan used to administer

Missouri's residual market prior to the commencement of the ARM Plan on July 1, 1995, and may be used in the future if selected by the director under the servicing carrier option or emergency option of the ARM Plan.

(2) Director's Options for Administering the ARM Plan. The director may select one (1) of the following options for administering the ARM Plan.

(A) The Contract Carrier Option. Under this option, by means of a formal bid process, the director may select a contract carrier to administer the Missouri residual market. The contract carrier will then be on the risk for the losses of the residual market, up to a retention level selected by the director.

1. In its capacity as the contract carrier, the insurer so selected, and any duly-licensed and approved subcontractors of that insurer, shall perform all of the functions required of a workers' compensation insurer, such as employee classification, underwriting, policy issuance, safety engineering, loss control, premium collection, claims handling, claims reserving, auditing and benefits payment, all under performance standards agreed to by the director, for those insured employers and their injured employees covered under the ARM Plan.

2. If losses exceed the selected retention level and thereby result in a deficit, each insurer licensed to write workers' compensation insurance in Missouri (including the contract carrier if it is also a voluntary market insurer) will participate in any such deficit in a proportional manner based upon the insurer's *pro rata* share of voluntary market premium. The deficit collection function shall be administered by the reinsurance administrator under the oversight of an advisory board appointed by the director under section (6) of this rule.

3. In its bid process, the department shall invite each bidding insurer to specify one (1) or more loss retention levels for losses, as defined in this rule, that the insurer is willing to retain in its capacity as contract carrier, provided the levels shall not be lower than one hundred percent (100%) of collected premium for a given contract year or greater than one hundred fifteen percent (115%) of collected premium for a given contract year. The reinsurance administrator shall determine whether or not the retention level selected by the director is exceeded for any given year, based on data supplied to it by the contract carrier.

4. The premium rates charged to an insured employer under the contract carrier option of this rule shall be based on rates and rating plans recommended by the contract carrier and approved by the director. Premium rates under the ARM Plan shall be actuarially sufficient to cover the losses and the reasonable operating expenses of the plan, plus a reasonable amount to cover profits and contingencies.

(B) The Servicing Carrier Option. Under this option, by means of a formal bid process, the director may select a plan administrator to administer the Missouri residual market. The plan administrator shall not be on the risk for the losses of the residual market, but shall instead cede those losses to the insurers in the state's voluntary workers' compensation market, who shall act as reinsurers under this rule, in return for the premium collected by the plan administrator less the plan administrator's percentage of that premium, as provided for below. The same shall be true of any servicing carriers employed by the plan administrator, provided, however, that a servicing carrier's reimbursement shall be paid out of the plan administrator's percentage of the premium.

1. If the plan administrator is a licensed and admitted workers' compensation insurer, the plan administrator, and any duly-licensed and approved subcontractors of the plan administrator, may perform all of the functions required of a workers' compensation insurer, such as employee classification, underwriting, policy issuance, safety engineering, loss control, premium collection, claims handling, claims reserving, auditing and benefits payment, all under performance standards agreed to by the director, for

those insured employers and injured employees covered under the ARM Plan.

2. If the plan administrator is not itself an insurer, it may delegate any insurance functions to one (1) or more licensed and admitted servicing carriers selected or designated by the plan administrator and approved by the director, and, at the option of the director, one (1) or more licensed and admitted direct assignment carriers. The plan administrator shall assign risks covered by the ARM Plan to any such servicing carrier(s) and direct assignment carrier(s) in a manner specified by the plan administrator in its bid, or any subsequent modifications thereto agreed to by the director.

3. The plan administrator, and the servicing carrier(s), if any, shall perform their services in return for a percentage of premium authorized by the director as part of the bid process to reimburse the plan administrator and any servicing carriers. The remaining premium shall be transferred to the insurers licensed to write workers' compensation insurance in Missouri (including the plan administrator and any servicing carriers) in a manner specified by the plan administrator in its bid.

4. In return for a share of the ARM Plan's premiums (less the plan administrator's percentage of premium) which share shall be based on the insurer's *pro rata* share of the Missouri voluntary workers' compensation market premium, each insurer licensed to write workers' compensation insurance in Missouri (including the plan administrator or any servicing carriers if they are also voluntary market insurers) shall participate under this rule by accepting its share of the plan administrator's liabilities for losses under policies insured by the ARM Plan, in a proportional manner based on the insurer's *pro rata* share of the voluntary market's premium.

5. The plan administrator shall account for all premiums collected and losses paid under the ARM Plan in a manner specified under subsection (7)(H) of this rule.

6. If the director authorizes the use of direct assignment carriers, such carriers shall be assigned employers by the plan administrator. A direct assignment carrier shall thereafter provide to such employers all the services required to be provided by the plan administrator and servicing carrier(s). A direct assignment carrier shall receive the premiums of such an assigned insured employer and shall accept all the liability for the losses of such an employer under the policy, but shall be exempt from participating further under this rule on a *pro rata* basis as to either collected premiums or paid losses. The direct assignment carrier's portion of the state's voluntary market premium shall be subtracted from the total voluntary market premium for purposes of calculating the *pro rata* shares of the remaining voluntary market carriers who are functioning as reinsurers for the losses of the ARM Plan.

7. The premium rates charged to an insured employer under the serving carrier option of this rule shall be based on rates and rating plans recommended by the plan administrator and approved by the director. Premium rates under the ARM Plan shall be actuarially sufficient to cover the losses and the reasonable operating expenses of the plan.

(C) The Emergency Option. Under this option, after being granted a waiver of the competitive bid process by the Commissioner of the Office of Administration under Section 34.045, RSMo and based on unusual market conditions, exigent circumstances or other events deemed by the director to constitute a threat to the life, property, public health or public safety of Missouri citizens entitled to coverage under the ARM Plan or which threatens to disrupt services under the plan, the director may appoint a duly-qualified and willing entity to function as either a contract carrier or as a plan administrator, as defined above, until such time as it is practical to conduct a formal bid process under the ARM Plan. Any contract carrier or plan administrator so appointed shall have the same rights and responsibilities under this rule as a contract carrier or plan administrator selected after a bid process. Each insurer licensed to write workers' com-

pensation insurance in the voluntary workers' compensation market shall participate in the reinsurance for such an appointed entity under this rule to the same extent as if the entity had been selected after a formal bid process. Under this option, the director and the entity so selected may agree in advance on the premium rates to be charged to insured employers under the ARM Plan for the period during which the emergency option is in effect.

(3) Contract Carrier.

(A) Under the contract carrier option for administering the ARM Plan, a contract carrier shall be selected by the director to administer the plan after a formal bid process conducted by means of a request for proposals (RFP) issued by the department. However, a contract carrier may also be selected by the director without a formal bid process under the emergency option for administering the ARM Plan.

(B) The services to be provided and performance standards to be met by the contract carrier under the ARM Plan are those set forth in the RFP issued by the director, as supplemented by any subsequent performance standards agreed to between the director and the contract carrier following the award of the contract carrier agreement. If a contract carrier is appointed by the director under the emergency option, the contract carrier will operate under the most recently issued RFP of the director, as supplemented by any subsequent performance standards agreed to between the director and the contract carrier following appointment of the contract carrier. In no event shall the performance standards to be met by the contract carrier be less rigorous than those required of a servicing carrier under the WCIP, except as authorized by the director.

(C) The amended 12/94 RFP shall be considered incorporated into this regulation by reference.

(D) The contract carrier shall make available its own staff, office space, facilities and equipment to the extent necessary to perform its obligations under this rule and the contract carrier agreement. The contract carrier shall perform its services, exercise its powers, and perform all of its duties in accordance with the terms of this rule, the contract carrier agreement, and such performance standards as may be established from time to time pursuant to this rule.

(E) The services to be provided by the contract carrier shall include employee classification, policy underwriting, policy issuance, safety engineering, loss control, premium collection, claims handling, claims reserving, auditing, and benefits payment, all under performance standards agreed to by the director, for those insured employers and injured employees covered under the ARM Plan.

(F) The contract carrier shall process, adjust, settle, compromise, defend, litigate and pay claims arising out of workers' compensation policies issued by the contract carrier under the ARM Plan. The contract carrier shall establish and maintain such claim reserves as are reasonable and proper. It shall also maintain complete, orderly and accurate claim files, records and accounts in accordance with generally accepted insurance principles and the laws of the state of Missouri.

(G) The contract carrier shall comply with the financial and data reporting requirements and procedures established from time to time by the advisory board and approved by the director pursuant to the ARM Plan, with the advice and recommendations of the reinsurance administrator regarding such requirements and procedures.

(H) The contract carrier shall report to the director, and to the reinsurers through the reinsurance administrator, as soon as possible, and, in any event, within ten (10) calendar days, any change in its ability to perform its obligations as a contract carrier hereunder.

(I) The contract carrier shall be fully liable for the payment of any and all workers' compensation administrative taxes and loss-based assessments under state or federal law.

(J) The contract carrier shall permit the director, the reinsurance administrator, or the reinsurers acting through either the director or the reinsurance administrator, full and free access during normal business hours to the contract carrier's premises, records and personnel for the purposes of auditing and reviewing the contract carrier's performance hereunder upon ten (10) calendar days written notice to the contract carrier by either the reinsurance administrator or the director. In the event of a termination of the contract carrier agreement or this rule, this provision shall survive such termination and remain in full force and effect until all losses under the policies issued by the contract carrier pursuant to the ARM Plan have been satisfied or otherwise resolved. Further, the survival of this provision shall not alter, modify, diminish, or extinguish any outstanding rights or obligations of the parties that otherwise may exist upon such termination under such policies, the contract carrier agreement or this rule.

(K) In its capacity as the contract carrier, the insurer so selected may perform its functions under this rule through duly-licensed subcontractors, subject to the approval of the director.

(L) Nothing in this rule shall relieve the contract carrier of any other obligations imposed on a workers' compensation insurer by Missouri law.

(4) Plan Administrator and Servicing Carriers.

(A) Under the servicing carrier option for administering the ARM Plan, a plan administrator may be selected by the director to administer the plan after a formal bid process conducted by means of a request for proposals (RFP) issue by the department. However, a plan administrator may also be selected by the director without a formal bid process under the emergency option for administering the ARM Plan.

(B) The services to be provided and performance standards to be met by the plan administrator under the ARM Plan are those set forth in the RFP issued by the director, as supplemented by any subsequent performance standards agreed to by the director and the plan administrator following the award of the plan administrator agreement. If a plan administrator is appointed by the director under the emergency option, the plan administrator will operate under the most recently issued RFP of the director, as supplemented by any subsequent performance standards agreed to between the director and the plan administrator following the appointment of the plan administrator. In no event shall the performance standards to be met by the plan administrator be less rigorous than those required of a servicing carrier under the WCIP except as authorized by the director.

(C) The amended 12/94 RFP shall be considered incorporated into this regulation by reference.

(D) The plan administrator shall make available its own staff, office space, facilities and equipment to the extent necessary to perform its obligations under this rule and the plan administrator agreement. The plan administrator shall perform its services, exercise its powers, and perform all of its duties in accordance with the terms of this rule, the plan administrator agreement, and such performance standards as may be established from time to time pursuant to this rule.

(E) The services to be provided by the plan administrator shall include employee classification, policy underwriting, policy issuance, safety engineering, loss control, premium collection, claims handling, claims reserving, auditing and benefits payment, all under performance standards agreed to by the director, for those insured employers and injured employees covered under the ARM Plan. If the plan administrator is a licensed and admitted workers' compensation insurer, the plan administrator shall perform these services.

(F) If the plan administrator is not itself a licensed and admitted insurer, it shall not directly accept any insurance risk, but rather, shall assign such insurance risk and may delegate normal insurance functions required under this rule to one (1) or more

licensed and admitted servicing carriers, selected or designated by the plan administrator and approved by the director, and, at the option of the director, one (1) or more direct assignment carriers. The plan administrator shall assign risks covered by the ARM Plan to any such servicing carrier(s) and direct assignment carrier(s) in a manner specified by the plan administrator in its bid, or any subsequent modifications thereto agreed to by the director. If servicing carriers or direct assignment carriers are utilized, the plan administrator shall monitor the performance of the servicing carrier or direct assignment carriers to assure they are meeting the performance standards agreed to by the plan administrator and the director.

(G) The plan administrator or servicing carriers shall process, adjust, settle, compromise, defend, litigate and pay claims arising out of workers' compensation policies issued by the plan administrator or any servicing carrier under the ARM Plan. The plan administrator or any servicing carriers shall establish and maintain such claim reserves as are reasonable and proper. They shall also maintain complete, orderly and accurate claim files, records and accounts in accordance with generally accepted insurance principles and the laws of the state of Missouri.

(H) The plan administrator and any servicing carriers shall comply with the financial and data reporting requirements and procedures established from time to time by the advisory board and approved by the director pursuant to the ARM Plan, with the advice and recommendations of the reinsurance administrator.

(I) The plan administrator shall report to the director, and to the reinsurers through the reinsurance administrator, as soon as possible, and, in any event, within ten (10) days, any change in its ability to perform its obligations as a plan administrator hereunder. Any servicing carrier shall report to the plan administrator, who shall in turn report to the director and the reinsurance administrator, as soon as possible, and, in any event, within ten (10) days, any change in its ability to perform its obligations as a servicing carrier hereunder.

(J) The plan administrator or any servicing carriers shall be fully liable for the payment of any and all workers' compensation taxes and premium or loss-based assessments under state or federal law.

(K) The plan administrator and any servicing carriers shall permit the director, the reinsurance administrator, or the reinsurers acting through either the director or the reinsurance administrator, full and free access during normal business hours to the entity's premises, records and personnel for the purposes of auditing and reviewing the entity's performance hereunder upon ten (10) days written notice to the entity by either the reinsurance administrator or the director. In the event of a termination of the plan administrator agreement and/or this rule, this provision shall survive such termination and remain in full force and effect until all losses under the policies issued by the plan administrator or any servicing carriers pursuant to the ARM Plan have been satisfied or otherwise resolved. Further, the survival of this provision shall not alter, modify, diminish, or extinguish any outstanding rights or obligations of the parties that otherwise may exist upon such termination under such policies, the contract carrier agreement or this rule.

(L) Nothing in this rule shall relieve the plan administrator, if the plan administrator is an insurer, of any other obligations imposed on a licensed workers' compensation insurer by Missouri law.

(5) Participation of Reinsurers.

(A) Under the contract carrier option for the administration of the ARM Plan, reinsurance shall be handled as follows:

1. For the period of the contract carrier agreement, the contract carrier shall cede to the reinsurers and the reinsurers shall accept only that portion of the contract carrier's liability for losses under the policies issued under the ARM Plan in excess of the

contract carrier's retention level. Such deficit losses shall be paid to the contract carrier upon evidence of payment by the contract carrier of such losses and verification of such payment by the reinsurance administrator;

2. In addition to their liability for the losses specified in paragraph (5)(A)1. above, the reinsurers shall also be liable for the expenses of the reinsurance administrator to the extent these expenses are approved from time-to-time by the advisory board;

3. If the period of the contract carrier agreement does not run concurrently with a calendar year, each successive twelve (12)-month period in the agreement shall be assigned to the calendar year in which that twelve (12)-month period commenced for purposes of determining the *pro rata* share of losses in excess of the contract carrier's retention for each of the reinsurers. If the period runs concurrently with a calendar year, each successive twelve (12)-month period shall be assigned to said calendar year;

4. Each reinsurer's proportion of liability in excess of the contract carrier's retention level, or any reinsurance administrator expenses, shall be based on that percentage of the total written premium in Missouri's voluntary workers' compensation market during the calendar year in which the contract carrier agreement commences that is represented by the reinsurer's total written voluntary market premium for that same period, subject to verification by the reinsurance administrator;

5. Each reinsurer's participation shall become effective and shall terminate on the dates specified in subsection (7)(N). Each reinsurer's share of the losses under this subsection shall be calculated with respect to each calendar year for which its participation is effective and shall be based upon the total amount of the participation of all the reinsurers in Missouri for that calendar year;

6. Each reinsurer's liability for its *pro rata* share of the losses under this subsection shall be separate and apart from the liability for the *pro rata* shares of the other reinsurers so that each reinsurer shall be liable solely for its own *pro rata* share of said losses and not the *pro rata* shares of any other reinsurer, except as otherwise provided in this rule, such as under paragraph (7)(L)5.;

7. A reinsurer shall be assessed for its *pro rata* share of any deficit by the reinsurance administrator after verification by the reinsurance administrator of payment of the losses by the contract carrier. Failure of a reinsurer to pay its assessment shall be grounds for discipline of the reinsurer by the department, and legal action by the contract carrier or the advisory board to recover such unpaid assessments;

8. At least annually, the contract carrier, in conjunction with the reinsurance administrator, shall provide an actuarial estimate as to the likelihood of a deficit to the department and the advisory board. Such estimates shall include a valuation of the probability of any future deficits based on amounts already incurred, determined by an evaluation procedure approved by the department. Such an evaluation procedure may be recommended to the department by the advisory board. Should a deficit be indicated by the actuarial estimate, a projection as to when assessments are expected to begin under this rule shall also be provided to the department;

9. In order to assist the determination of the existence of a deficit, the contract carrier and its affiliated insurers shall, at a minimum, segregate their Missouri voluntary market workers' compensation financial experience and business transactions from their Missouri workers' compensation residual market financial experience and business transactions;

10. The liability for losses of the reinsurers with respect to each cession under this rule shall commence simultaneously with that of the contract carrier, except as otherwise provided in this rule;

11. Except as otherwise provided under this rule, such as subsection (7)(L), the reinsurers shall have no obligation for losses within the contract carrier's retention level.

(B) Under the servicing carrier option for the administration of the ARM Plan, reinsurance shall be handled as follows:

1. For the period of the plan administration agreement, the plan administrator, itself or through its duly-appointed servicing carriers, if any, shall cede to the reinsurers and the reinsurers shall accept, each for its own part and not for the others, quota share reinsurance of the plan administrator's or servicing carrier's liability for all losses under policies issued through the ARM Plan. Losses shall be paid to the plan administrator or servicing carrier upon evidence of payment by the plan administrator or servicing carrier and verification by the reinsurance administrator;

2. In addition to their liability for the losses specified in paragraph (5)(B)1. above, the reinsurers shall also be liable for the expenses of the reinsurance administrator to the extent these expenses are approved from time to time by the advisory board;

3. If the period of the plan administrator agreement does not run concurrently with a calendar year, each successive twelve (12)-month period in the period shall be assigned to the calendar year in which that twelve (12)-month period commenced for purposes of determining the *pro rata* share for each of the reinsurers. If the period runs concurrently with a calendar year, each successive twelve (12)-month period shall be assigned to said calendar year;

4. Each reinsurer's proportion of liability for losses, or any reinsurance administrator expenses, shall be based on that percentage of the total written premium in Missouri's voluntary workers' compensation market during the calendar year in which the contract carrier agreement commences that is represented by the reinsurer's total written voluntary market premium for that same period, subject to verification by the reinsurance administrator, but not including the premiums of any direct assignment carriers;

5. Each reinsurer's participation shall become effective and shall terminate on the dates specified in subsection (7)(N). Each reinsurer's share of the losses under this subsection shall be calculated with respect to each calendar year for which its participation is effective and shall be based upon the total amount of the participation of all the reinsurers in Missouri for that calendar year;

6. Each reinsurer's liability for its *pro rata* share of the losses under this subsection shall be separate and apart from the liability for the *pro rata* shares of the other reinsurers so that each reinsurer shall be liable solely for its own *pro rata* share of said losses and not the *pro rata* shares of any other reinsurer, except as otherwise provided in this rule, such as paragraph (7)(L)5.;

7. A reinsurer shall be assessed for its *pro rata* share of any losses by the reinsurance administrator after verification by the reinsurance administrator of payment of the losses by the plan administrator or servicing carriers. Failure of a reinsurer to pay its assessment shall be grounds for discipline of the reinsurer by the department, and legal action by the plan administrator, servicing carriers or the advisory board to recover such unpaid assessments;

8. In order to assist in the payment of assessments, the plan administrator and any servicing carriers shall, at a minimum, segregate their Missouri voluntary market workers' compensation financial experience and business transactions from their Missouri workers' compensation residual market financial experience and business transactions;

9. The liability for losses of the reinsurers with respect to each cession under this rule shall commence simultaneously with that of the plan administrator, except as otherwise provided in this rule.

(C) Under the emergency option for the administration of the ARM Plan, the handling of any reinsurance shall depend upon whether the director has selected a contract carrier or a plan administrator to administer the ARM Plan. If the director has selected a contract carrier, any reinsurance shall be handled as provided under subsection (5)(A) above. If the director has selected

a plan administrator, reinsurance will be handled as provided under subsection (5)(B) above.

(6) Reinsurance Administrator and Advisory Board.

(A) Subject to the direction and approval of the advisory board, the reinsurance administrator, shall perform the functions set forth in this rule, including the following:

1. Informing the director as to any insurance carrier not participating as a reinsurer as required under this rule;

2. Administering the deficit sharing mechanism under the contract carrier option of this rule or the premium and loss distribution and assessment mechanism under the servicing carrier option of this rule;

3. Advising the department as to the oversight activities requisite to ensuring appropriate performance by the contract carrier or the plan administrator and any servicing carriers;

4. Acting as secretary for the advisory board;

5. Analyzing a contract carrier's estimate of whether and when a deficit will occur; and

6. Determining expenses and fees for the operation of the deficit sharing and assessment provisions of this rule, and assessing each insurer participating in the ARM Plan for these expenses and fees, on an equitable basis determined by the advisory board. Such administrative expenses and fees shall be labeled as such on any assessments to clearly distinguish them as being in addition to the amount of any underlying deficit under the contract carrier option or any assessment under the servicing carrier option.

(B) Advisory Board.

1. The advisory board shall be composed of at least nine (9) but no more than thirteen (13) members, appointed by the director as follows:

A. No fewer than nine (9) insurers who write workers' compensation insurance in Missouri's voluntary market, and who are representative of the interests of such carriers;

B. Other members as determined by the director, with consideration given to members recommended by the advisory board.

2. The function of the advisory board is to oversee the reinsurance administrator, and to assist and advise the director regarding the execution of the ARM Plan by a contract carrier, a plan administrator and any servicing carriers, and the member insurers required to be reinsurers under the ARM Plan. The advisory board may consider any matter referred to it by the reinsurance administrator or the director which relates to the operation of the ARM Plan.

3. Each advisory board member shall serve a term of two (2) years, but may serve additional terms.

4. No advisory board member shall fill more than one (1) position on the board. All advisory board members shall serve until their successors are designated by the director. Any vacancy on the advisory board, by resignation or otherwise, shall be filled by a representative of the member's insurer or organization, until a replacement is appointed.

5. The advisory board members, in person or by proxy, shall hold an annual meeting at which it shall elect a chairperson. The advisory board shall hold such additional meetings as necessary whenever requested by the chairperson, the director or upon petition of three (3) advisory board members. Meetings of the advisory board may be held or attended, and votes taken, by means of a teleconference.

6. The advisory board shall review any expenses or fees recommended by the reinsurance administrator to reimburse the reinsurance administrator, the members of the advisory board and any duly appointed subcontractors thereof, for their services on behalf of the ARM Plan. The advisory board shall, on behalf of the reinsurers, approve such recommendations to the extent the board finds such recommendations fair and reasonable.

7. The advisory board shall also approve any amounts needed to indemnify the board or the reinsurance administrator.

(7) Additional Reinsurance Provisions.

(A) Original Conditions.

1. All reinsurance under this rule shall be subject to the same rates, terms, conditions and waivers, and to the same modifications and alterations as the underlying workers' compensation policies, except as otherwise provided in this rule.

2. Nothing herein shall in any manner create any obligations or establish any rights against the reinsurers in favor of any third party unless authorized under this rule.

3. A reinsurer's rights and responsibilities under this rule shall continue unchanged for the period of each extension of the contract carrier agreement or plan administrator agreement, except for revisions necessary to be consistent with the terms of each such extension.

(B) Indemnification. Notwithstanding anything stated herein, this rule shall not apply to any loss incurred by a contract carrier, plan administrator or any servicing carrier as a result of any willful misconduct or any fraudulent or criminal act by an employee, officer or director of the contract carrier, plan administrator or servicing carrier acting individually or collectively or in collusion with any individual or corporation or any other organization or party involved in the presentation, defense or settlement of any loss covered under this rule.

(C) The Reinsurance Administrator. The reinsurance administrator is recognized as the agent through whom funds and communications relating to this rule (including but not limited to notices, statements, reports of premium, losses and loss adjustment expense, salvage and loss settlements) shall be transmitted.

(D) Premium.

1. The contract carrier or the plan administrator and any servicing carriers shall be responsible for the collection of all premiums on all risks assigned to them under the ARM Plan. The reinsurers shall have no responsibility for the premiums, uncollected premiums, return premiums, or similar items under this rule.

2. Reinsurers shall not receive any portion of the premiums on the policies issued by the contract carrier.

(E) Salvage and Subrogation. In the event that the contract carrier or plan administrator and any servicing carrier recover any money by way of subrogation or otherwise, other than from the reinsurers, on a claim for which the contract carrier or plan administrator and any servicing carriers has been reimbursed by the reinsurers, the contract carrier or plan administrator and any servicing carriers shall reimburse the reinsurers for amounts paid by the reinsurers on account of such claim, but not more than the total amount so recovered less expenses incurred in securing such recovery.

(F) Losses.

1. Losses shall be reported by the contract carrier or plan administrator and any servicing carriers in the format and manner specified in subsection (7)(H) below.

2. All loss settlements made by the contract carrier or plan administrator and any servicing carriers, whether under strict contract conditions or by way of compromise, shall be binding unconditionally upon the reinsurers.

(G) Losses in Excess of Policy Limits or Extra-Contractual Losses.

1. In the event the contract carrier or plan administrator and any servicing carrier pays an amount of loss in excess of its policy limits under a workers' compensation policy issued under the ARM Plan, but otherwise within the terms of the policy (hereinafter called "loss in excess of policy limits") including but not limited to any punitive, exemplary, compensatory or consequential damages, resulting from the alleged improper conduct of the insured, one hundred percent (100%) of the loss in excess of the policy limits as well as the loss adjustment expense incurred in connection therewith shall be added to the losses of the contract carrier or plan administrator and any servicing carriers, under this rule.

2. Any loss in excess of policy limits shall be deemed to have occurred on the same date as the loss covered or alleged to be covered under the policy.

(H) Reports and Remittances.

1. Within forty-five (45) days after the end of each calendar quarter, the contract carrier or the plan administrator shall report to the reinsurers, through the reinsurance administrator, premiums, losses, and other amounts for the quarter, in such detail as the advisory board shall reasonably require.

2. Any amounts paid by the contract carrier or plan administrator and any servicing carriers and recoverable from reinsurers shall be remitted by the reinsurers, through the reinsurance administrator, as promptly as possible after receipt and verification of the report of the contract carrier or plan administrator. Any remittance shall be paid within thirty (30) days of the invoice mailing, or within other reasonable time periods established by the advisory board.

(I) Offsets. The contract carrier or plan administrator and any servicing carriers, or the reinsurers shall have and may exercise at any time, and from time to time, the right to offset any balance or balances whether on account of premiums or on account of losses or obligations otherwise due from one party to the other or any affiliate thereof in their capacities under the terms of this rule.

(J) Currency. All limits under this rule are expressed in United States dollars and all premium and loss payments shall be made in United States currency. For the purposes of this rule amounts paid or received by the contract carrier or plan administrator and any servicing carriers in any other currency shall be converted into United States dollars at the rates of exchange at which such transactions are converted on the books of the contract carrier, plan administrator or servicing carrier.

(K) Inadvertent Delays, Errors or Omissions in Performance. Inadvertent delays, errors or omissions made in connection with this rule or any transaction hereunder shall not relieve either party from any liability which would have attached had such delay, error or omission not occurred, provided that such error or omission will be rectified as soon as possible after discovery.

(L) Insolvency.

1. In the event of the insolvency of the contract carrier, the plan administrator or a servicing carrier, reinsurance owed under this rule shall be payable directly to the insolvent entity or its liquidator, receiver, conservator or statutory successor on the basis of the liability of the insolvent entity without diminution because of the insolvency of the entity or because the liquidator, receiver, conservator or statutory successor of the entity has failed to pay all or a portion of any claim.

2. The liquidator, receiver, conservator or statutory successor of the insolvent contract carrier, plan administrator or servicing carrier shall give written notice to the reinsurers of the pendency of a claim against the insolvent entity indicating the contract or bond reinsured which claim would involve a possible liability on the part of the reinsurers within a reasonable time after such claim is filed in the conservation or liquidation proceeding or in the receivership, and that during the pendency of such claim, the reinsurers may investigate such claim and interpose at their own expense, in the proceeding where such claim is to be adjudicated, any defense or defenses that they may deem available to the insolvent entity or its liquidator, receiver, conservator or statutory successor.

3. The expense thus incurred by the reinsurers shall be chargeable, subject to the approval of the court, against the insolvent entity as part of the expense of conservation or liquidation to the extent of a *pro rata* share of the benefit which may accrue to the insolvent entity solely as a result of the defense undertaken by the reinsurers.

4. The reinsurance shall be payable by the reinsurers to the contract carrier or the plan administrator and any servicing carriers or their liquidator, receiver, conservator or statutory successor,

except as provided by applicable law except where this rule specifically provides another payee of such reinsurance, in the event of the insolvency of such entity and where the reinsurers, with the consent of the direct insureds, have assumed such policy obligations of the reinsurers to the payees under such policies and in substitution for the obligations of the insolvent entity to such payees.

5. In the event any reinsurer becomes insolvent, participation by such reinsurer under this rule shall be deemed terminated at the time such reinsurer becomes insolvent. The outstanding liability of an insolvent reinsurer shall be assumed by and apportioned among the remaining reinsurers in the same manner for which other liabilities are apportioned.

(M) Security. If determined by the director or the reinsurance administrator, the contract carrier, plan administrator, servicing carriers or the reinsurers will provide such security for the benefit of the parties to this rule as determined by the director or the reinsurance administrator.

(N) Commencement and Termination.

1. This rule shall apply to the individual contract carrier agreement or plan administrator agreement for the period of said agreement and any extensions thereto.

2. A reinsurer's responsibility under this rule may be terminated by the reinsurer only upon surrender of its authority to write workers' compensation in Missouri. The reinsurance administrator shall inform the director of any reinsurer that terminates its participation under this rule.

3. If the reinsurance administrator determines that the contract carrier, plan administrator or servicing carrier is not in compliance with any provision of this rule, the contract carrier or plan administrator agreement, or any performance standards, it shall notify the director, the contract carrier, plan administrator or servicing carrier of such noncompliance. The director shall have the right to take appropriate action as specified in the ARM Plan or the contract carrier agreement or plan administrator agreement.

4. Reinsurance under this rule shall remain in full force and effect until all losses under the workers' compensation policies for the time period in question have been settled and satisfied or otherwise resolved.

(8) Rules for Eligibility and Assignment.

(A) The provision of this section shall govern the insuring of employers who are required to carry workers' compensation insurance, but who are unable to procure such insurance through ordinary methods. Any employer insured under the ARM Plan shall receive at least the same quality of service as is available to those employers who are voluntarily insured. This includes, but is not limited to, safety engineering, loss control, claims handling, employee classification and reserving practices. Any dispute arising hereunder shall be subject to section (10) of this rule.

1. Application for insurance shall be filed with the contract carrier or plan administrator by the employer or its representative on a form approved by the department.

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

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

B. If the employer, while insurance is in force, knowingly refuses to meet reasonable health and safety requirements designed to remove an imminent threat of serious bodily harm;

C. If the employer has an outstanding obligation for workers' compensation premium on previous insurance about which there is no formal dispute;

D. If the employer, or its representative or the producer knowingly makes a material misrepresentation on the application by omission or otherwise, including any of the following: estimated annual premium, estimated payroll, offers of workers' compensation insurance, nature of business, name or ownership of business, previous insurance history, or outstanding premium obligation of the employer.

3. Coverage may be bound under the ARM Plan, in accordance with the following procedures:

A. The producer should forward the completed application to the contract carrier or plan administrator with a certified, cashier's, or producer check payable to the contract carrier or plan administrator for the estimated annual or deposit premium as computed by the producer, or determined by contacting the contract carrier or plan administrator prior to submission of the application. The employer or its representative shall also include with and as a part of the application a copy of the employer's latest filed federal employer 941, 941E, 942 or 943 form or equivalent federal- or state-required verifiable current payroll record, such as an unemployment wage report. The application form, as approved by the department, shall indicate the employer's agreement to authorize its current carrier to release any safety and loss information to the contract carrier or plan administrator. For all employers other than those formerly self-insured, coverage will be bound at 12:01 a.m. on the first day following the postmark time and date on the envelope in which the application is mailed, including the estimated annual or deposit premium, or the expiration of existing coverage, whichever is later. If there should be no postmark, coverage will be effective 12:01 a.m. of the date of receipt by the contract carrier or plan administrator unless a later date is requested. Those applications hand delivered to the contract carrier or plan administrator will be effective as of 12:01 a.m. the date following receipt by the contract carrier or plan administrator unless a later date is requested;

B. For employers formerly self-insured, coverage will be bound at 12:01 a.m. not later than sixty (60) days following the postmark time and date on the envelope in which the application is mailed including the estimated annual or deposit premium, or the expiration of existing coverage, whichever is later. If there should be no postmark, coverage will be effective 12:01 a.m. not later than sixty (60) days following the date of receipt by the contract carrier or plan administrator unless a later date is requested. Those applications hand delivered to the contract carrier or plan administrator will be effective 12:01 a.m. not later than sixty (60) days following the date of receipt by the contract carrier or plan administrator, unless a later date is requested;

C. If coverage is bound pursuant to the above, the contract carrier or plan administrator shall issue a binder with copies to the producer, the insured, and the Missouri Division of Workers' Compensation.

4. Assignments shall not be made under this rule unless all workers' compensation premium obligations on any previous insurance have been met by the employer, unless a formal dispute regarding such payments has been made. If, subsequent to policy issuance, the insured employer does not meet all workers' compensation insurance premium obligations under a previous policy or under a present policy, the contract carrier or plan administrator shall have the right to cancel the policy currently in force under the ARM Plan.

5. The policy shall be issued for a term of one (1) year, unless insurance for a shorter term has been requested or unless a longer period is authorized by the department. A copy of the policy declarations and all endorsements, properly stamped ARM Plan, will be retained by the contract carrier or plan administrator.

6. If, after the issuance of a policy, the contract carrier or plan administrator determines that an employer is not entitled to insurance, or has failed to comply with reasonable safety requirements, or has violated any of the terms and conditions under which

the insurance was issued, and after providing opportunity for cure, the contract carrier or plan administrator shall initiate cancellation. Any insured employer so canceled must reestablish eligibility or must demonstrate entitlement before any further coverage will be provided under the ARM Plan.

7. All policies issued pursuant to the ARM Plan shall be written utilizing the classifications, forms, rates and rating data set forth in the contract carrier or plan administrator's RFP response or as otherwise approved by the director.

8. Unless otherwise authorized by the director, at least sixty (60) days prior to the expiration date of insurance, the contract carrier or plan administrator shall send a renewal proposal or notice of impending expiration of coverage to the named insured at his last known address and the insured's producer. Upon receipt of the required premium, the policy shall be renewed and a copy of the policy information page and all endorsements, properly stamped ARM Plan, shall be retained by the contract carrier or plan administrator.

9. Any otherwise eligible employer who agrees to have its workers' compensation insurance provided by an insurer other than the contract carrier or plan administrator on a voluntary basis may do so at any time. The contract carrier or plan administrator shall cancel its coverage on a *pro rata* basis as of the effective date of the voluntary insurer's policy.

10. Any employer desiring insurance for operations in states other than Missouri must notify the contract carrier or plan administrator regarding the need for insurance in such additional states in accordance with section (9) of this rule.

11. The employer may designate a licensed producer and, with respect to any renewal of the contract carrier or plan administrator, may change the designated producer by notice to the contract carrier or plan administrator prior to the date of such renewal or, with the consent of the contract carrier or plan administrator, at any other time. The contract carrier or plan administrator shall pay a fee to the producer designated by the employer on new and renewal policies after July 1, 1995, upon payment of all premium due under the policy. The fee shall be based on the state standard premium and paid at the rate as set forth in the contract carrier or plan administrator's RFP response.

(D) Producers through whom employers seek worker's compensation coverage shall endeavor to place such coverage through the voluntary market; only where the producer certifies on an application approved by the department that the producer has been unable to obtain such coverage at comparable cost and service through the voluntary market shall such coverage be placed in the ARM Plan. At the direction of the department, a risk may be removed from the ARM Plan if the department subsequently determines coverage was available through the voluntary market at comparable cost and service and this fact was known to the producer.

(E) For purposes of assisting in the placement of risks in the voluntary market, an expiration list of risks in the ARM Plan shall be made available, by the contract carrier or plan administrator and through the department, to producers and insurers, at the normal copying costs.

(F) Notwithstanding the above provisions of this section, an approved plan administrator may file a plan of operation for approval by the director which incorporates its own rules of eligibility and assignment, which, upon approval, shall supercede the rules of eligibility and assignment of this section.

(9) Interstate Assignments.

(A) Any employer seeking coverage under this ARM Plan and desiring coverage for workers' compensation benefits of states other than Missouri for its Missouri-based employees who may have business reasons to travel to other states may request the contract carrier or plan administrator to furnish such insurance on an endorsement form approved by the department. Such form may

indicate that employees based in states other than Missouri are not covered by this endorsement.

(B) Employers with known exposures in states other than Missouri may request the contract carrier or plan administrator to assist them in obtaining coverage in these other states. If the contract carrier or plan administrator does not wish to provide coverage for the additional states on a voluntary basis, the contract carrier or plan administrator shall advise the employer and the producer to submit an application to the appropriate administrator having jurisdiction.

(10) Dispute Resolution Procedure.

(A) Any person affected by the operation of the ARM Plan including, but not limited to, insured employers, covered employees, producers, the contract carrier, the plan administrator, a servicing carrier or a direct assignment carrier who may have a dispute with respect to any aspect of the plan, may seek a review of the matter by the department by setting forth in writing with particularity the nature of the dispute, the parties to the dispute, the relief sought and the basis thereof. The department may secure such additional information as it deems necessary to make a decision.

(B) Appeals from insured employers and covered employees on plan matters regarding individual employer disputes shall be within the jurisdiction of the mechanism established to handle such appeals under the applicable insurance laws, including section 287.335, RSMo. All other disputes shall be handled as follows:

1. If the dispute relates to the general operation of the ARM Plan, excluding individual employer disputes and those arising under this rule, the department shall review the matter and render a written decision with an explanation of the reasons for the decision within sixty (60) days after receipt of all the information necessary to make the decision. In reviewing any such matter, the department shall decide the dispute in accordance with the state law, regulation and policy and in the interests of the reasonable and proper administration of the ARM Plan. The department's decision shall be final, subject to court review;

2. Except as provided below, if the dispute arises under the reinsurance provisions of this rule, the reinsurance administrator shall first review the matter and render a written decision to the complaining party with an explanation of the reasons for the decision within sixty (60) days after receipt of all the information necessary to make the decision. Any party affected by the decision may seek a review by the advisory board established under this rule by requesting such review, in writing, within thirty (30) days of the date of the decision by the reinsurance administrator. The advisory board must then review the matter and render its written decision pursuant to the bylaws adopted by the board. Any party affected by a decision of the advisory board may seek a *de novo* review by the department by requesting such a review in writing within thirty (30) days of the date of the board's decision.

(11) Rate Monitoring.

(A) It is essential for maintaining the long-run viability of the ARM Plan that the contract carrier, plan administrator or prospective contract carriers or plan administrators have the data necessary to determine appropriate rates. As insureds may, over time, move between the ARM Plan and the voluntary market, data for the total market must be maintained. On behalf of the department, the NCCI shall maintain necessary ratemaking data in order to permit the actuarial determination by the department and the contract carrier or plan administrator of rates, consistent with the NCCI-administered classification system, for the business insured through the ARM Plan. The contract carrier or plan administrator is required to report its experience on business written under the ARM Plan to the NCCI in the same format required by the NCCI for carriers writing voluntary market business. The NCCI shall provide to the contract carrier or plan administrator and the

department all requested information necessary for establishing reasonable classifications, rates and enabling financial information required for the successful operation of the ARM Plan and the total market, and for whatever other purposes the department from time to time may require for said data.

(B) The contract carrier or plan administrator shall file any rate requests for the residual market in accordance with the provisions of section 287.896, RSMo.

(12) Notice. Within sixty (60) days of the effective date of this rule, the reinsurance administrator shall provide notice to all insurers that are required to participate as reinsurers under this rule. The notice shall include a copy of this rule or a reference to the department's website, as well as the dates the rule was effective and shall advise each insurer of the obligation to participate as reinsurers. The reinsurance administrator shall inform the Director of any insurer refusing to participate as a reinsurer, as required under this rule.

(13) Confidentiality of Information.

(A) For purposes of this section, the phrase "contract carrier or plan administrator" shall include any reinsurance market reinsurers, or any subcontractors, vendors, servicing carriers or other entities or persons utilized by or associated with the contract carrier or plan administrator in the administration of and the insuring of the Missouri workers' compensation residual market under the ARM Plan.

(B) Detailed information, whether provided orally, in writing, via computer media, or by other means, given to producers, insurers, or their clients, required to properly evaluate, underwrite and insure risks under the ARM Plan, shall be provided by such persons and entities to the contract carrier or plan administrator for evaluation, underwriting and insurance purposes. In consideration of the disclosure of such information, the contract carrier or plan administrator agrees to and shall comply with the following provisions:

1. The contract carrier plan or administrator shall keep in confidence and shall not, except as directed by the insured, disclose to any third party, or use for the benefit of any third party, such detailed information, regardless of the form or format of the disclosure; such information shall be used by the contract carrier or plan administrator solely for the evaluating, underwriting and insuring of workers' compensation and employer's liability insurance coverage under the ARM Plan, and not for any other purpose without the prior approval of the insured.

2. The contract carrier or plan administrator shall take all reasonable measures necessary to protect the confidentiality of such information in its possession from disclosure to any other third party, except as directed by the insured.

3. The contract carrier or plan administrator shall not directly or indirectly request, encourage, or advise any employers who have acquired or seek to acquire coverage through the ARM Plan to utilize the services of any specific insurance producer, insurer or group of insurers for workers' compensation insurance coverage.

4. The contract carrier or plan administrator shall not give any other person, firm or entity any rights that would circumvent or violate the provisions of paragraphs 1. through 3., above.

(C) Notwithstanding the confidentiality provisions set forth in subsection (B) of this section, the contract carrier or plan administrator is expressly authorized to provide the information delineated in subsection (B) of this section to the department, the Missouri Division of Workers' Compensation and any other organization or entity designated by the department to gather and analyze data for the purpose of establishing rate or loss cost information, or in conjunction with the issuance of reports concerning the Missouri workers' compensation market.

(D) In addition to any other remedies available to the department regarding any violation of the provisions of this section, including those contained in section 374.280, RSMo, the department shall consider the nature and severity of any violations of the provisions of this section during its consideration of the letting of or renewal of any contract for the administration of and insurance of the Missouri workers' compensation residual market under the ARM Plan.

*AUTHORITY: sections 287.896 and 374.045, RSMo 2000. Emergency rule filed June 15, 1995, effective July 1, 1995, expired Oct. 28, 1995. Original rule filed April 3, 1995, effective Sept. 30, 1995. Emergency rescission filed May 7, 2002, effective May 17, 2002, expires Feb. 18, 2003. Emergency rule filed April 26, 2002, effective May 6, 2002, expires Feb. 6, 2003. A proposed rule covering this same material is published in this issue of the **Missouri Register**.*